

State Bank of India and another v. B. R. Vaid (J. V. Gupta,)

(5) The end result is that this petition succeeds. The respondents are directed to release the widow's family pension to the petitioner forthwith and without any delay for it is a matter of sustenance for her.

*The petitioner shall have the costs.

S.C.K.

Before J. V. Gupta, J.

STATE BANK OF INDIA AND ANOTHER,—Appellants.

versus

B. R. Vaid,—Respondent.

Regular Second Appeal No. 2611 of 1986.

August 6, 1987.

State Bank of India (Supervising Staff) Services Rules—Rule 50(3) (ii) and 51(2)—Domestic inquiry against an employee—Inquiry Officer exonerating the employee of certain charges—Disciplinary authority not agreeing with the report—ORDER of disciplinary authority without notice to the employee—Such employee proceeded ex-parte throughout—Requirement of fresh notice—Validity of order of Disciplinary authority—Domestic inquiry—Scope of interference by Civil Court.

Held, that it was for the disciplinary authority to go into the matter of sufficiency or insufficiency of the evidence. The disciplinary authority was within its jurisdiction to disagree with the finding of the inquiry officer under Rule 50(3)(ii) of the State Bank of India (Supervising Staff) Services Rules and to record its own finding on such charges on the basis of the evidence already on the record for the purpose. The employee was being proceeded ex parte throughout and, therefore, it was not at all necessary for the disciplinary authority to issue any fresh notice to him while reversing the finding of the inquiry officer on certain charges.

(Paras 10 and 11).

Held, further that in the disciplinary proceedings after holding domestic inquiry the scope of interference by the Civil Court is very limited and the courts are not supposed to go into the merits of the controversy and to sit in appeal over the findings given by the disciplinary authorities. Therefore, the Civil Courts are not to interfere with the findings of the domestic tribunals. (Para 14)

Regular Second Appeal from the order of the Court of Shri R. D. Singla, Additional District Judge, Jalandhar, dated 6th August, 1986 affirming that of Shri Gurdev Singh Additional Senior Sub-Judge, Jalandhar, dated 20th March, 1984 decreeing the suit of the plaintiff with costs, bearing No. 428 of 1982, holding that the order dated 5th October, 1982 passed by the Chief General Manager for dismissal of service of the plaintiff is illegal ultra vires etc. and not binding on the plaintiff.

R. K. Chhibbar, Advocate, for the Appellants.

Ravi Nanda, Advocate and S. S. Mahajan, Advocate, for the Respondent.

JUDGMENT

J. V. Gupta, J.

(1) This is defendant's second appeal against whom the suit for declaration has been decreed by both the Courts below.

(2) The plaintiff-respondent claimed to have joined the service in the Imperial Bank of India on January 2, 1943, as a Clerk and later claimed to have been transferred to the State Bank of India by virtue of the legislation. According to him, his superannuation date was January 10, 1982, afternoon and he had got promotion as a Manager in the State Bank of India by that time. On August 14, 1980, he proceeded on leave after handing over the charge as a Manager to one O. P. Sharma. He applied for his premature retirement after attaining the age of more than 55 years. It was alleged by him that in spite of his having retired, he received a letter from the Bank that he was given three months' extension in service. His case is that he did not accept the said letter because it was incompetent. He was charge-sheeted,—*vide* charge-sheet dated February 15, 1982, for which he had to bring a separate suit for declaration in which he also prayed for the grant of the *ad interim* injunction restraining the Bank of claim that he was in the service of the Bank and also restraining it from instituting *ex patre* enquiry against him. (It may be mentioned here that Regular Second Appeal No. 2339 of 1987 had arisen out of the said suit which has been disposed of, *vide* separate order whereby the said suit was dismissed). According to the plaintiff, the stay order continued till June 5, 1982,

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when it was vacated. The plaintiff filed appeal against the said order vacating the stay and the appellate Court also gave an injunction that the Bank was restrained from compelling the plaintiff to perform his duties as the Manager of the Bank. Meanwhile another extension was granted to the plaintiff up to October 9, 1982. According to him, the enquiry was conducted in spite of the stay order and, therefore, was not justified. In the suit, also challenged the order dated October 5, 1982, of the Chief General Manager dismissing him from service being illegal, inoperative and not binding upon him *inter alia* on the ground that the enquiry against him violated the principles of natural justice and that no copy of the findings of the enquiry officer had been supplied to him. Paragraph 15 of the plaint contains the grounds on which the order of dismissal as such was challenged.

(3) In the written statement, the defendants admitted that the plaintiff was transferred to the defendant—Bank being an employee of the Imperial Bank of India. It was further contended that the plaintiff had agreed to be governed by the State Bank of India service rules in respect of his conditions of service. It was pleaded that the plaintiff did not enjoy a statutory status as such, but was with the Bank on contract basis. It was pleaded that the superannuation date of the plaintiff was January 31, 1982 and not January 10, 1982, as claimed by him. However, his service was extended by the Bank as an enquiry was being contemplated against him for violating certain Bank rules which had caused loss to the Bank. In spite of his service having been extended, the plaintiff was absent from duty unauthorisedly. The plaintiff as the Branch Manager of the New Railway Road Jalandhar Branch got established foreign letters of credit on behalf of M/s Ravindra Chemical Works, Jalandhar through the Amritsar and Kapurthala Branches. The Bank was put to financial loss and it necessitated the extension of his services in the interest of the Bank. The enquiry held against him was validly conducted. It was also pleaded that the suit for declaration as such was not maintainable. The plaintiff appeared as P.W.1 and made the statement that he was not entrusted with the duties forming the basis of the charge-sheet. Moreover, the acts of omissions and commissions alleged in the charge-sheet were also not a part of his duties. However, it was agreed that the enquiry file along with the documents be read in evidence. Counsel for both the parties also stated that the formal proof of the documents be dispensed with.

(4) The trial Court found that in the present case, major penalty of dismissal of the plaintiff was imposed and that he had not been heard, nor the principles of natural justice had been complied with and, thus, the order of dismissal passed by the Chief General Manager could not be said to be sustainable and legal. According to the trial Court, the findings in the enquiry were based on no evidence. According to the trial Court, there was no impediment as to how the suit was not maintainable and the plaintiff was not entitled to the relief of declaration. It was also held that the plaintiff's service was governed by statutory rules and the defendant Bank was a statutory body. In view of these findings, the plaintiff's suit was decreed. In appeal, the learned Additional District Judge, Jalandhar affirmed the said findings of the trial Court and, thus, maintained the order passed in favour of the plaintiff. Dissatisfied with the same, the Bank has filed this second appeal in this Court.

(5) The learned counsel for the appellant contended that it has been wrongly held by both the Courts below that the findings of the enquiry officer were based on no evidence. According to the learned counsel, the plaintiff was proceeded *ex parte* as he did not join the proceedings. Necessary documents were produced before the enquiry officer and it was on the basis of the evidence that the findings were given in the enquiry report. The whole approach of the Courts below, according to the learned counsel, was wholly wrong, illegal and misconceived. The civil Court could not sit in appeal on the findings given in a domestic enquiry. According to the learned counsel, even the rules of evidence as such were not applicable to domestic enquiries and, therefore, no formal proof of the documents produced before the enquiry officer was required. In support of the contention, the learned counsel relied upon *State of Haryana v. Rattan Singh* (1); *State of Andhra Pradesh v. S. Sree Rama Rao* (2); *The State of Haryana v. Shri Ram Chander* (3); *U. R. Bhatt v. Union of India* (4) and *State of Mysore v. Shivabassappa* (5). It was next contended that no suit for declaration as such was maintainable as there was no relationship of a civil servant between the respondent and the appellant. In support of this contention, the

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- (1) 1977(1) S.L.R. 750.
 - (2) A.I.R. 1963 S.C. 1723.
 - (3) 1976(2) S.L.R. 690.
 - (4) A.I.R. 1962 S.C. 1344.
 - (5) A.I.R. 1963 S.C. 375.

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learned counsel relied upon *V. T. Khanzode v. Reserve Bank of India* (6); *K. L. Tripathi v. State Bank of India* (7). It was further argued that no hearing was required to be given to the plaintiff by the Disciplinary Authority because the rule did not contemplate any such hearing. The approach of the Courts below in this behalf was wrong and illegal. In support of the contention, the learned counsel relied upon *M. S. Chauhan v. State Bank of India* (8). On the other hand, the learned counsel for the respondent submitted that since the defendant Bank was a corporation constituted under the statute, it was a statutory body and, therefore, its employees were entitled to the relief of declaration. According to the learned counsel, there was no material relevant to the charges against the plaintiff and, therefore, the findings arrived at were without any evidence. The material produced by the defendant Bank in the form of letters was not relevant as regards the charges framed against him. Moreover, the enquiry officer did not hold the plaintiff guilty of any major charges; rather he was exonerated, but he was held guilty in appeal without any evidence and that too without providing his opportunity of hearing which violated the principles of natural justice. According to the learned counsel, the plaintiff was on leave for one year on account of his illness and, therefore, he sought premature retirement on that account and not on any other reason. According to the learned counsel, even the enquiry continued in spite of the stay orders passed by the civil Court; hence the same was illegal.

(6) I have heard the learned counsel for the parties and have also gone through the enquiry file.

(7) From the enquiry files, it appears that on August 16, 1982, he did not present himself before the Enquiry Officer rather he sent a letter repeating his plea for not attending the enquiry. As three clear opportunities had already been given to him, but he was not coming up, therefore, he was proceeded *ex parte*. The presenting officer submitted a list of documents by which he proposed to substantiate the charges. The same were marked and Exhibited as E. 1 to E. 27. Then the presenting officer was required to substantiate the charges as framed. It is then that he proved the charges *ad seriatim* from the documents produced by him. It was on the basis

(6) A.I.R. 1982 S.C. 917.

(7) (1978) 1 Lab. & I.C. 441.

(8) 1985(1) S.L.R. 684.

of this evidence that the enquiry report dated September 13, 1982, was submitted by the enquiry officer. From a perusal of the enquiry report, it could not be successfully argued that the findings arrived at were without any evidence or that the evidence produced was not relevant to the charges framed against the plaintiff. The approach of the Courts below in this behalf was wholly wrong and misconceived. According to the learned Additional District Judge when the plaintiff had been proceeded *ex parte*, it was incumbent upon the enquiry officer to ask the presenting officer to produce evidence to prove his charges. The fact that the charges were tried to be got proved by putting questions to the presenting officer and getting his answers thereto means that the charge-sheet as it is was admitted to be correct without any evidence. As observed earlier, this approach of the Court below was wholly misconceived.

(8) In *U. K. Bhatt's case* (supra), it was held by the Supreme Court,—

“In the present case there was an enquiry held before the Enquiry Officer. The Enquiry Officer had afforded to the appellant an opportunity to remain present and to make his defence. It is true that all the witnesses of the State who could have been examined in support of their case were not examined *viva voce*, but that was because of the conduct of the appellant who declined to participate in the enquiry. He declined to take part in the proceeding and the Enquiry Officer was, in our view, justified in proceeding to act upon the materials placed before him. Once the appellant expressed a desire not to take further part in the proceeding of the Enquiry Officer that Officer was entitled to proceed *ex parte* and to act upon the materials placed before him. The enquiry made by the Enquiry Officer cannot therefore be challenged either on the ground of unfairness or incompleteness, the appellant having been afforded the protection of the Constitution guaranteed under section 240 clause 3 of the Government of India Act. The order of discharge from service passed against him by order of the Governor General is not liable to be questioned on the ground that the materials may not have justified the passing of that order. It is not within the competence of the civil Court to sit in judgment over the decision of the authority who is competent by law to dismiss a public servant provided he has been

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afforded an opportunity to defend himself consistently with the substance of the constitutional guarantee."

A similar proposition was again reiterated in *Shivabasappa's case* (supra)—

"For a correct appreciation of the position it is necessary to repeat what has often been said that tribunals exercising quasi-judicial functions are not Courts and that therefore they are not bound to follow the procedure prescribed for trial of action in Courts nor are they bound by strict rules of evidence. They can, unlike Courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure, which govern proceedings in Court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case but where such an opportunity had been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in Courts."

In *Rattan Singh's case* (supra), the Supreme Court in paragraph 5 of the judgment further observed,—

"Reliance was placed, as earlier stated, on the non-compliance with the departmental instruction that statements of passengers should be recorded by Inspectors. These are instructions of prudence, not rules that bind or vitiate in the violation. In this case, the Inspector tried to get the statements but the passengers declined, the psychology of the latter in such circumstances being understandable, although may not be approved. We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid. Likewise, the re-evaluation of the evidence on the strength of co-conductor's testimony is a matter not for the Court but for the administrative tribunal. In conclusion, we do not think the Courts below were right in over turning the finding of the domestic tribunal."

(9) If the above said guidelines provided by the highest Court are kept in view, there is very limited scope for the civil Court to interfere with the findings of the domestic tribunals. In the present case, as observed earlier, the findings of the Courts below that the enquiry report against the plaintiff without any evidence is wholly wrong and misconceived. The enquiry report is on the record. It is quite detailed. Findings have been given on every charge after discussing the evidence produced by the Bank. In view of this, the only conclusion possible is that the enquiry report being based on evidence was valid and the dismissal of the plaintiff on its basis was within jurisdiction.

(10) It is true that the plaintiff was exonerated of certain charges by the enquiry officer, but the disciplinary authority did not agree with those findings of the enquiry officer and held that even the charges which were held to be unsubstantiated by the enquiry officer stood proved against the plaintiff. The argument raised on behalf of the plaintiff that in that situation, notice should have been given to him has no substance. The plaintiff was proceeded *ex parte* throughout. Besides rule 50(3)(ii) of the State Bank of India (Supervising Staff) Services Rules, (hereinafter called the Rules) does not contemplate any such notice. The said rule reads as follows:—

“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.”

According to the Courts below, it could not be held that there was sufficient evidence on the record enabling the disciplinary authority to disagree with the finding of the enquiry officer. This approach is wholly wrong. It was not for the civil Court to see the sufficiency or insufficiency of the evidence. It was for the disciplinary authority to go into such matter. Therefore, the disciplinary authority was within its jurisdiction to disagree with the findings of the enquiry officer, in view of rule 50(3)(ii), re-produced above, and to record its own findings on such charges on the basis of the evidence already on record for the purpose.

(11) As regards the notice, the same stands concluded by the Division Bench judgment of this Court in *M. S. Chauhan's case*

(supra), wherein while interpreting rule 51(2) of the Rules, it was observed,—

“At this stage it may be observed that a contention was sought to be raised by Mr. Bali that a personal hearing is envisaged under sub-rule (2) of rule 51 by the Appellate Authority. On the plain reading of the language of sub-rule (2) of rule 51 of the Rules, we find no merit in this submission of the learned counsel. The only requirement of the rule is the consideration by the Appellate Authority of the appeal in the light of the comments sent by the punishing authority. The language of this sub-rule does not indicate that the Appellate Authority is required to give any personal hearing to an employee who has filed the appeal. Consequently, we find no merit in this contention of the learned counsel.”

Moreover, as observed earlier, the plaintiff was being proceeded *ex parte* throughout and, therefore, it was not at all necessary for the disciplinary authority to issue any fresh notice to him while reversing the findings of the enquiry officer on certain charges.

(12) In view of the above findings, the plaintiff's suit is liable to be dismissed, because no fault could be found with the report of the enquiry officer or the findings of the disciplinary authority for the dismissal order passed as a result of those findings. However, an argument was raised on behalf of the plaintiff that no suit for declaration as such was maintainable as there was relationship of master and servant between the parties. Similar matter came up for consideration before the Allahabad High Court in *K. L. Tripathi's case* (supra), wherein it was held that the employees of the State Bank of India were not civil servants and as such Article 311 of the Constitution was not applicable in their cases. It was also held therein that the Rules having not been framed by the Central Board after consultation with the Reserve Bank of India and birth the previous sanction of the Central Government, had no statutory character. This case went in appeal to the Supreme Court. The said appeal was dismissed and the decision therein is reported as *K. L. Tripathi v. State Bank of India* (9).

(13) Similar type of regulations framed by the Reserve Bank of India also came up for consideration before the Supreme Court

in *V. T. Khanzode's case* (supra) wherein it was held that the regulations were not statutory, but were administrative in nature and could be altered or amended by administrative circulars. Thus, the plaintiff's suit is also liable to be dismissed on the ground that no suit for declaration as such was maintainable.

(14) It may be observed here that the plaintiff was held guilty of non-compliance of certain Bank rules. Non-compliance of the said rules was itself sufficient to take action against him as was held by the Supreme Court in *K. L. Tripathi's case* (supra), as follows:

“It has to be emphasised that the appellant was not charged for defrauding the Bank. He was charged mainly for the conduct which suggested that he acted improperly and in violation of the principles on which sound banking business should be conducted. The charge against the appellant was that he had acted in violation of procedure of the Bank, he had disregarded all safeguards in sanctioning the overdrafts, encashing bills and his conduct had exposed the bank to grave risks and that he had flagrantly violated the bank rules and instruction with a view to cover up attempts to misappropriate bank's money after defrauding the Bank. Whether actual misappropriation had been caused or bank defrauded or not were not relevant in respect of the charges against him.”

According to the written statement and the charges against the plaintiff, during his incumbency as a Branch Manager of the New Railway Road Jalandhar Branch, he got established foreign letters of credit on behalf of M/s Ravindra Chemical Works, Jalandhar through Amritsar and Kapurthala Branches, which were found to be highly irregular by the Circle Vigilance Officer of the defendant Bank. According to the defendant Bank, it put it to a loss of about Rs. 3,00,000. It may be reiterated that in the disciplinary proceedings after holding domestic enquiries, the scope of interference by the civil Court is very limited and the Courts are not supposed to go into the merits of the controversy and to sit in appeal over the findings given by the disciplinary authorities. Therefore, the civil Courts are not to interfere with the findings of the domestic tribunals.

(15) As a result of the above discussion, this appeal succeeds and is allowed. The judgments and decree of the Courts below are set aside and the plaintiff's suit is dismissed with costs.

S.C.K.