

Central Bank Of India Ltd vs Karunamoy Banerjee on 18 August, 1967

Equivalent citations: 1968 AIR 266, 1968 SCR (1) 251, AIR 1968 SUPREME COURT 266, 1968 LAB. I. C. 219, 1968 (1) SCJ 850, 1967 2 LABLJ 739, 15 FACLR 398, 1968 (1) SCWR 254, 1968 BLJR 226, 32 FJR 4841, 1968 (1) SCR 251, 32 F J R 481

Author: C.A. Vaidyalingam

Bench: C.A. Vaidyalingam, M. Hidayatullah

PETITIONER:
CENTRAL BANK OF INDIA LTD.

Vs.

RESPONDENT:
KARUNAMOY BANERJEE

DATE OF JUDGMENT:
18/08/1967

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
HIDAYATULLAH, M.

CITATION:
1968 AIR 266 1968 SCR (1) 251
CITATOR INFO :
R 1968 SC 236 (9)

ACT:
Industrial Dispute--Domestic Enquiry--Employee admitting charges and pleading extenuating circumstances--Examining him before other witnesses and asking him questions whether violative of natural justice.

HEADNOTE:
The respondent who was an employee of the appellant bank was charged with issuing unauthorised overdrafts to a constituent. A domestic enquiry was held against him. In two written explanations before the enquiry he admitted, the allegations against him and only pleaded extenuating

circumstances. At the enquiry he was examined in the first instance; having again admitted his fault he was asked certain questions by the Enquiry Officer in respect of the extenuating circumstances pleaded by him. Two more witnesses were then examined by the Enquiry Officer. Finally, according to the latter's report the respondent was discharged. In proceedings under s. 33(2)(b) of the Industrial Disputes Act, 1947 the Labour Court, Dhanbad held that the enquiry was bad for violation of natural justice inasmuch as the respondent had been examined before other witnesses and was unduly cross-examined. The bank appealed by special leave.

Held: The rules of natural justice as laid down by this Court have to be observed in the conduct of a domestic enquiry against a workman. If the allegations are denied by the workman the burden of proving the truth of those allegations will be on the management; and the witnesses called by the management must be allowed to be cross-examined by the workman and the latter must also be given an opportunity to examine himself and adduce any other evidence that he might choose, in support of his plea. But if the workman admits his guilt, to insist upon the management to let in evidence about the allegations will be an empty formality. In such a case it will be open to the management to examine the workman himself, even in the first instance, so as to enable him to offer any explanation for his conduct, or to place before the management any circumstances which will go to mitigate the gravity of the offence. But, even then, the examination of the workman, under such circumstances, should not savour of an inquisition. If, after the examination of the workman the management chooses to examine any witnesses, the workman must be given a reasonable opportunity to cross-examine those witnesses and also to adduce any other evidence that he may choose. [259D-F]

In the present case the respondent in his written explanations had admitted the charges and therefore there was no violation of natural justice in first examining him. The questions put to him were not unfair. The Labour Court was wrong in not giving approval to his discharge. [258F; 259A, G]

Associated Cement Co. Ltd., v. Workman [1964] 3 S.C.R. 652, distinguished.

Strawboard Manufacturing Co. v. Gobind, [1962] Supp. 3 S.C.R. 618, referred to. 251

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 440 of 1966. Appeal by special leave from the order dated May 30, 1964 of the Central Government Labour Court, Dhanbad in Application No.

L.P. 123 of 1962.

H. R. Gokhale, C. A., Chopra, P. C. Bhartari, and O. C. Mathur, for the appellant.

Janardan Sharma, for the respondent.

The Judgment of the Court was delivered by Vaidialingam, J. This appeal, by special leave, by the appellant Bank, is directed against the order, dated May 13, 1964, of the Central Labour Court, Dhanbad, rejecting an application, filed by the Bank, under s. 33(2)(b), of the Industrial Disputes Act, 1947 (Act XIV of 1947) (hereinafter called the Act), and declining to grant approval of the action taken, by the Bank, by way of discharging the respondent-workman, from the Bank's services. The respondent was, at the material time, the Assistant Accountant, at the main Office of the Bank, at Calcutta. In view of certain serious irregularities, noticed by the Bank, in respect of the work of the respondent in the Current Accounts Department and, in particular, in current account ledgers Nos. 4 and 6, by order dated March 8, 1961, the respondent was suspended, with immediate effect. He was also informed that the charges against him would be communicated, in due course.

By a further communication, dated March 13/14, 1961, the respondent was required to offer his explanation, in respect of four allegations made in the said communication. The main allegations were that, in respect of ledger 'accounts Nos. 4 and 6, standing in the names of Messrs. Commercial Bureau and Messrs Evergreen Paper Syndicate and Messrs. Gokul Chand Radharam, respectively, overdrafts had been allowed, by the respondent, from time to time, without obtaining the sanction of the authorities competent to allow overdrafts. The other allegations were to the effect that the respondent, who was charged with the duty of supervising both these ledgers, did not bring to the notice of the authorities the said irregularities, that must have come to his knowledge, and that the pass-book of ledger No. 4 was missing. The respondent sent a reply, dated March 17, 1961, wherein he has admitted that, in the course of discharge of his routine duties and responsibilities, in good faith and honestly, he had granted overdrafts to the parties referred to, by the Bank, temporarily, in excess of their credits or limits, without reference to the higher authorities. He also admitted that it was a blunder on his part and that he should not have done so. He offered an explanation to, the effect that he was led to believe in the credit-worthiness of the individuals, because of their long association with the Bank and also because of the fact that, on prior occasions, overdrafts had been granted to them, in excess of permissible limits. He also stated that the Bank had not been put to any financial loss because of his having granted the overdrafts; but, he again admitted his negligence, in not strictly abiding by the Bank's rules, when he made the overdrafts. He, however, added that his conduct had always been guided by good faith and honesty. This was the answer, regarding the main allegations, contained in the Bank's letter, dated March 13/14, 1961. He also stated, regarding the other minor allegations, that it was not his duty to report about the debit balances, which was the function of the ledger-keeper, and that he was not also responsible for the loss of the pass book, of ledger No. 4. He wound-up his explanation by stating that his conduct, in making the overdrafts, without obtaining the sanction of the higher authorities, was an omission which had been, unfortunately, committed by him, and he expressed regret for the same and requested the management to excuse him, accepting his explanation. The appellant Bank was not satisfied with the explanation offered by the respondent, and communicated a charge-sheet, on June

3, 1961. The main charges related to the overdrafts, paid by the respondent, in ledger Nos. 4 and 6, without obtaining the permission of the proper sanctioning authority. The Bank also informed the respondent that he would, be given a further opportunity to explain his conduct, in relation to those matters, and defend himself in the enquiry which would be held by the Agent of the Bank, on June 20, 1961, at 3.30 p.m. The respondent again sent a reply, dated July 11, 1961, to the charge-sheet served on him. In this reply also, he admitted that, in the course of discharge of his routine duties and responsibilities, he had allowed the parties, mentioned in the charge-sheet, to overdraw, in excess of their credits, without reference to the higher authorities, and that it was a blunder on his part which he should not have committed. But, he again reiterated that he, in good faith and bona fide, was led to believe about the credit- worthiness of the parties, who had long association, with the Bank. He also emphasized, here again, that the Bank had not been put to any financial loss, because of his conduct. He again admitted that this act of permitting the parties concerned to overdraw, in excess of their limits, without reference to the sanctioning authorities, amounted to negligence, but his conduct was perfectly bona fide and honest. He also offered explanation, on the minor alle- gations, to the effect that it was the duty of the ledger- keeper to give the figures regarding the overdrafts and that he had not done any mis-reporting to the higher authorities. Finally he made a plea that he had been serving the institution for over 20 years without any blemish, and the unfortunate omission, done by him, in the matter of not taking the sanction of the higher authorities, might be excused, accepting his expression of regret, The inquiry proceedings (conducted by the Agent, who was the Inquiry Officer), produced before the Labour Court, shows that the respondent was examined in the first instance. After eliciting answers regarding the duration of his employment, in the institution, and as to the nature of the work he was discharging, he was asked about the charge-sheet served on him, as well as the explanation, furnished by him. The respondent has categorically answered to the effect that he has understood the charge-sheet and that he does not want to add anything more to the explanation that he has already submitted. This answer must have reference to the explanation, furnished by him, on June 20, 1961, in answer to the charge-sheet, wherein he has admitted his mistake in sanctioning the overdrafts, to the parties concerned, with- out obtaining the sanction of the appropriate authorities. But, inasmuch as he has stated, in his explanation, that on prior occasions also overdrafts have been allowed beyond the permissible limits, certain questions were put to him, in respect of those matters. The respondent, no doubt, appears to have stated that some of the cheques, issued to the parties concerned, have been initialled by an Officer of the Bank, Mr. Bhatena. The respondent, again, squarely admitted, in his answers, that he has committed a blunder in granting advances, on his own responsibility, of about Rs. 87,000. He has also admitted that he did not make any reference to the Agent, when passing the cheques, regarding the accounts of Messrs. Evergreen Paper Syndicate or Messrs. Gokul Chand Radharam.

During the course of the inquiry, the respondent was allowed to search the records concerned, and trace, if possible, any cheques that may have been initialled by Mr. Bhatena, and no such cheque could be traced. Inasmuch as three other officers, whose conduct was being enquired into, had made certain statements against the respondent, the latter was asked as to whether he wanted to examine, or cross-examine those persons; and the respondent very clearly stated that he did not like to cross-examine anybody.

The Management then examined Mr. Bhatena and Mr. Savkar, two Officers of the Bank, in the presence of the respondent. It is also seen that the respondent has also put certain questions to those two witnesses; and he has also stated that he has no further questions to be put to them. At the conclusion of the recording of the evidence, it is seen that the respondent finally made an appeal to the Enquiring Officer to consider his case sympathetically, at the same time admitting his acts of omission, in the discharge of his duties. He has also expressed his gratitude for the patient hearing that has been given to him during the inquiry. The Enquiry Officer, in his report, dated November 10, 1961, has, after referring to the nature of the enquiry conducted by him, found the respondent guilty of the main charges of having permitted the parties concerned, to obtain overdrafts, beyond the permissible limits, without having obtained the sanction of the appropriate authorities. In this connection, the Enquiry Officer has referred to the fact that these allegations have been admitted by the respondent. Regarding the other minor allegations, that the respondent caused other officers to record debit balances incorrectly, and the loss of the pass book relating to ledger No. 4, the respondent was exonerated. The Enquiry Officer was of the view that the offence committed by the respondent, of which he had, been found guilty, was very serious which merited dismissal; but, in view of the long number of years of service put in by the respondent and as no loss has resulted to the Bank itself, he held that the respondent should be discharged from service.

The Bank communicated the order of discharge, by its letter, dated June 27, 1962, enclosing a pay-order for Rs. 472.70 being the wages for one month, viz., July 1962. The respondent, who had a right to file an appeal, against this order of discharge, based upon the finding of the Enquiry Officer, does not appear to have had recourse to any appeal, but, on the other hand, filed a representation, dated July 11, 1962, before the Managing Director of the appellant Bank. Even in this representation, he has not, in any manner, attacked the enquiry proceedings, nor the findings recorded by the Enquiry Officer. On the other hand, he again admitted his fault in having permitted, overdrafts, to the parties concerned, without obtaining the sanction of the appropriate authorities after expressing regret for his conduct. He also stated that the Bank had not suffered any financial loss, because of his conduct. Having due regard to these circumstances, he made a plea for mercy being shown to him, by cancelling the order of discharge and permitting him to resume his duties in the Bank. The Managing Director, by his communication, dated September 17, 1962, rejected the representation made by the respondent, and declined to reinstate him in the Bank's service. In the meanwhile, inasmuch as an industrial dispute was pending before the National Industrial Tribunal, the appellant had filed, an application, before the said Tribunal, on March 17, 1962, under s. 33(2) of the Act, seeking approval of the action taken against the respondent, on the basis of the recommendation of the Enquiry Officer. This application was transferred to the Central Government Labour Court, Dhanbad, on April 18, 1962. In the objections, dated September 2, 1963, filed by the respondent before the Labour Court, for the first time he raised the plea that in view of the advice given by the officers of the Bank, he sent replies admitting his guilt regarding the allegations made against him, by the Bank. He also raised the plea that the overdrafts, that were given by him, to the parties concerned, were really due to oral orders given by the then Agent and the Superintendent, on telephone. He also raised the plea that he was not allowed to represent his case, through the Union, before the Enquiry Officer, nor was he allowed to cross-examine the persons making allegations against him. We have elaborately referred to the matters, mentioned above, because the question, that arises for consideration, in this appeal, is as to the correctness of the view of the Labour Court,

that the domestic enquiry conducted by the Bank, as against the respondent, is not fair and that principles of natural justice have been violated. The Labour Court, by its order under attack, has held that the domestic enquiry, conducted by the Bank, is not proper and that rules of natural justice have not been observed; and, in consequence, it has declined to grant the approval, sought for, by the Bank.

At this stage, it may be mentioned that the Labour Court has held in favour of the management, that it has complied with the proviso to s. 33(2)(b) of the Act, as interpreted, by this Court, in its decision in *Strawboard Manufacturing Co. v. Gobind(1)*. That is, it has held that the action of the Bank, by way of discharge, payment of wages and making of the application for approval, have been taken as part of the same transaction. For coming to the conclusion that the inquiry proceedings are violative of the rules of natural justice, the Labour Court has given three reasons (i) in the inquiry, the respondent has been examined, even in the first instance, and he was cross-examined, to elicit points in support of the charges; (ii) the respondent was not allowed to cross-examine witnesses; and (iii) the respondent was prejudiced, in his defence, as he had to conduct his defence without the assistance of the Union, during the enquiry. There can be no controversy that the principles of natural justice must be observed, in the conduct of a domestic enquiry, and the workman, concerned, must be allowed reasonable opportunity to defend himself. It has also been held, by this Court, that rules of natural justice require that the workman, proceeded against, should be informed clearly of the charges levelled against him; witnesses should be normally examined in the presence of the employee, in respect of the charges; if statements, taken previously and given by witnesses, are relied on, they should be made available to the workman concerned the workman should be given a fair opportunity to examine witnesses, including him-self in support of his defence; and the Enquiry Officer should record his findings, based upon the evidence so adduced.

So far as grounds Nos. 2 and 3, given by the Labour Court are concerned, it is clear from the record of the enquiry proceedings, that the respondent was permitted to put questions to Mr Bhatena and Mr. Savkar, who were examined, during the enquiry (1) [1962] Supp. 3 S.C.R. 618.

We have also referred to the fact that the Enquiry Officer has recorded that the respondent has stated that he has no further questions to be put to them. We have also referred to the fact that the inquiry proceedings show that the respondent was specifically asked as to whether he wanted to examine or cross-examine the three other Officers, whose conduct was also under enquiry, and who had made certain statements against the respondent; but the respondent categorically stated that he did not like to examine or cross-examine any of those persons. The respondent has not stated, even in the representations made by him to the Managing Director, that he was not given any opportunity to cross-examine the witnesses produced in the inquiry. Again, even in his evidence before the Labour Court, the respondent has categorically stated that he has not made any request, in writing, for being represented by the Union, at the inquiry. Apart from the fact that he has no such right, even factually it is seen that he made no such request. Therefore the findings of the Tribunal that the respondent was not permitted to cross-examine the witnesses during the domestic enquiry, and, that he was prejudiced in his defence because he was not permitted to have the assistance of the Union, are both erroneous.

Then the question is as to whether the inquiry proceedings can be considered to have been conducted in violation of the rules of natural justice, inasmuch as the respondent was examined, even in the first instance. We have already indicated that, as a fact, it is borne out by the records that the respondent, so far as the inquiry against him was concerned, was examined, in the first instance, and Mr. Bhatena and Mr. Savkar, were examined later. According to the Labour Court, the object of the management, in examining the respondent, in the domestic enquiry even in the first instance, was to have the charges substantiated by statements got out of the mouth of the employee, rather than to examine witnesses for the Bank, in support of the charges. It is the further view of the Labour Court that the respondent has been, so to say, cross-examined, just to elicit points in substantiation of the charges. These circumstances, according to the Labour Court, violate the principles of natural justice and, as such vitiate the domestic enquiry.

In this connection, the Labour Court has relied upon certain observations, contained in the judgment of this Court in Associated Cement Co. Ltd., v. Workmen(1) viz.:

"It seems to us that it is not fair in domestic enquiries against industrial employees that at the very commencement of the enquiry, the employee should be (1) [1964] 3 S.C.R. 652, 661.

closely cross-examined, even before any other evidence is led against him."

and draws the inference that under no circumstances should a workman, whose conduct is the subject of disciplinary proceedings, by a domestic tribunal, should be examined, in the first instance. We are of the opinion that no such conclusion could be drawn from the decision, referred to above. In that case, it will be seen, the management had charge-sheeted one Malak Ram, with disorderly behaviour when a cinema, show was being given. Malak Ram, at all stages, stoutly denied his having taken part in any hooliganism or rowdyism, as alleged by the management. Under those circumstances, instead of adducing evidence, in the first instance, regarding the allegations made against Malak Ram, in the domestic enquiry, the management commenced the proceedings, with a very close examination of Malak Ram himself. The nature of the questions put to him also clearly indicated that the worker was being cross-examined, and answers sought to be elicited in support of the allegations made by the management. This Court, in coming to the conclusion that the conduct of an enquiry, in that manner, constitutes a very serious infirmity, made the observations, quoted above. Therefore, it will be seen, that in that case, when the workman concerned was totally denying the allegations made against him, it was the duty of the management to let in evidence, in the first instance, to substantiate its allegations, and permit the workman to cross-examine those witnesses and also permit him to let in independent evidence, in defence of his plea; and this Court emphasized that the normal rule to be followed, in such, enquiries, is, as stated above.

In the case before us, we have already referred to the various proceedings that have taken place, from which it will be seen clearly that the workman was 'at all stages, admitting the truth of the allegations made against him, by the management. In his communication, dated March 17, 1961, as well as, in his reply, to the charges, made by him on June 20, 1961, he has `categorically admitted that he has committed a mistake in permitting the constituents concerned to overdraw, without

obtaining the sanction of, the appropriate authorities. Even when the enquiry proceedings began, he had stated that he had nothing more to add, in respect of the charges framed against him. When once the workman himself has, in answer to the charge levelled against him, admitted his guilt, in our opinion, there will be nothing more for the management to enquire into. That was the position in the case before us. Therefore, we are not inclined to agree with the reasoning of the Labour Court that when there has been an admission' of guilt, by the respondent himself, it can still be stated, that there is a violation of the principles of natural justice merely because of the fact that the workman was examined, in the first instance. Nor, are we impressed with the further view, expressed by the Labour Court, that the way in which answers were elicited from the workman, showed that there has been a cross-examination, by the management, to obtain points in substantiation of the charges. We have gone through the entire examination of the respondent at the domestic enquiry, and we are satisfied that there is no such infirmity. In fact, the question of the management trying to obtain answers to support the charges, does not arise at all, in this case because the respondent has consistently admitted his guilt, at all stages. On the other hand, the nature of the questions put to the respondent clearly indicate that the management, when once the workman had, admitted his guilt, was only giving him an opportunity to explain his conduct or to refer to circumstances, if any, which could be taken into account in extenuation of his conduct. The management had also permitted the respondent to put questions to the other two witnesses, examined during the enquiry, viz., Mr. Bhatena and Mr. Savkar. We must, however, emphasize that the rules of natural justice, as laid down by this Court, will have to be observed, in the conduct of a domestic enquiry against a workman. If the allegations are denied, by the workman, it is needless to state that the burden of proving the truth of those allegations will be on the management; and, the witnesses called, by the management, must be allowed to be cross-examined, by the workman, and the latter must also be given an opportunity to examine himself and adduce any other evidence that he might choose, in support of his plea. But, if the workman admits his guilt, to insist upon the management to let in evidence above the allegations, will, in our opinion, only be an empty formality. In such a case, it will be open to the management to examine the workman himself, even in the first instance, so as to enable him to offer any explanation for his conduct, or to place before the management any circumstances which will go to mitigate the gravity of the offence. But, even then, the examination of the workman, under such circumstances, should not savour of an inquisition. If, after the examination of the workman, the management chooses to examine any witnesses, the workman must be given a reasonable opportunity to cross-examine those witnesses and also to adduce any other evidence' that he may choose.

Having considered the enquiry proceedings, in its entirety, in this case, we are satisfied that there has been no violation of the rules of natural justice. Therefore, it follows that the order of the Labour Court, refusing to grant approval, as asked for, by the management, is erroneous and, as such, it is set aside. In the result, the appeal is allowed-, but parties will bear their own costs in this appeal.

G.C. Appeal allowed.