

STATE BANK OF INDIA & ORS.

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v.

ATINDRA NATH BHATTACHARYYA & ANR.

(Civil Appeal No. 5842 of 2019)

JULY 25, 2019

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[L. NAGESWARA RAO AND HEMANT GUPTA, JJ.]

Doctrines/Principles: Principle of natural justice – Reasonable opportunity of hearing – On facts, writ petition by employee challenging his removal from service – High Court set aside the order of punishment as well as penalty order, directing employer to serve notice before imposing penalty – Thereafter, employer-bank served repeated notice for personal hearing to employee, however, employee did not appear – In appeal by the employee, the Division Bench however, again directed the employer-Bank to grant another opportunity of hearing to the employee – On appeal held: Once opportunity has been granted to the employee, he is not entitled to another opportunity on the ground of compassion – Time and again opportunity of hearing cannot be granted on the pretext of justice – Delaying tactics cannot be rewarded in such a manner – Once the employee has failed to avail of opportunity of hearing granted, the Bank cannot be directed to give another opportunity – Thus, the directions issued by the Division Bench to grant another opportunity not sustainable and is set aside – In view of grave and serious allegations of financial irregularities against the employee, the order of removal cannot be said to be unjust.

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Allowing the appeal, the Court

HELD: 1.1 The respondent avoided availing the opportunity when offered thrice. Once opportunity has been granted to the respondent, he is not entitled to another opportunity on the ground of compassion. The only reasoning given by the Division Bench is ‘justice demands’ that the respondent be given one last opportunity to place his version. The respondent lost his chance to put his version before the Competent Authority when called upon by the Authority to do

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A so. Time and again opportunity of hearing cannot be granted on the pretext of justice. The delaying tactics cannot be rewarded in such a manner. Once the respondent has failed to avail of opportunity of hearing granted, the Bank cannot be directed to give another opportunity for the sake of justice. Therefore, the directions issued by the Division Bench to grant another opportunity are not sustainable and the same are set aside. [Para 10] [774-D-F]

1.2 The allegations of financial irregularities against the respondent run into crores of rupees under multiple heads. The inquiry officer found ten charges proved whereas six charges have not been proved. Because of grave and serious allegations of financial irregularities, the order of removal cannot be said to be unjust. [Para 11] [774-F-G]

1.3 Even though, the judgment of the Single Bench finding fault with the order of removal as affirmed in the appeal, cannot be said to be justified in view of the judgment of this Court in the case of **Mohammad Badruddin* but since the Bank has not filed an appeal against such judgment, therefore, the correctness of the said judgment is not being examined in the appeal which is directed against judgment of Division Bench of High Court. [Para 12] [774-G-H; 775-A]

Bank of India v. Apurba Kumar Saha (1994) 2 SCC 615 ; **State Bank of India & Ors. v. Mohammad Badruddin* 2019 (7) JT 288 ; *State Bank of India & Ors. v. Ranjit Kumar Chakraborty & Anr.* (2018) 12 SCC 807 ; *State Bank of India & Ors. v. B.R. Saini* (2018) 11 SCC 83 - referred to.

Case Law Reference

(1994) 2 SCC 615	referred to	Para 7
2019 (7) JT 288	referred to	Para 7
(2018) 12 SCC 807	referred to	Para 8
(2018) 11 SCC 83	referred to	Para 8

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5842 A
of 2019.

From the Judgment and Order dated 07.04.2017 of the High Court
at Calcutta in in CAN No. 8866 of 2016 in FMA No. 1898 of 2016.

Sanjay Kapur, Kauser Husain, Ms. Megha Karnwal, Ms. Shubhra B
Kapur, Advs. for the Appellants.

Anand, Abhijit Sengupta, Kumar Neeraj, Ms. Rajeshri N. Reddy,
Advs. for the Respondents.

The Judgment of the Court was delivered by

HEMANT GUPTA, J. 1. Leave granted. C

2. The order of the Division Bench of the High Court at Calcutta
dated April 7, 2017 is the subject matter of challenge in this appeal.

3. The respondent - Atindra Nath Bhattacharyya was charge
sheeted on December 28, 1999 containing 16 charges on the ground that
while working as Chief Manager of Baghbazar Branch of the Bank
from November 19, 1997 to September 9, 1998, he has committed various
irregularities pertaining to credit and local clearing instruments. The
inquiry officer appointed conducted inquiry in respect of charges levelled
against the respondent and submitted his report dated January 14, 2002
to the Appointing Authority which was also forwarded to the respondent
on April 12, 2002. The Appointing Authority found huge irregularities on
the part of the respondent and imposed punishment of removal on January
24, 2003. The appeal was dismissed by the Appellate Authority on April
19, 2005. D E

4. The respondent filed a writ petition before the High Court at
Calcutta wherein, the order of punishment as affirmed by the Appellate
Authority, was set aside by the Single Bench on January 13, 2016 on the
ground that the delinquent was not given any opportunity to show cause
in respect of the nature and quantum of punishment. F

5. The appellant did not challenge the said order but instead called
the respondent vide communication dated March 24, 2016 for personal
hearing in terms of the direction of the learned Single Judge. In response
thereto, the respondent sent communication to the Bank on March 31,
2016 that he has challenged the order passed by the learned Single Bench, G

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- A therefore, the Bank should not proceed in respect of grant of opportunity of hearing. The appellant again called upon the respondent to appear for personal hearing vide communication dated April 7, 2016 but the respondent did not appear for personal hearing but sent communication to the Bank on April 13, 2016 that the Bank should not proceed as he has filed an appeal. The appellant, once again, called upon the respondent
- B for personal hearing vide communication dated April 22, 2016 but the respondent did not appear. The intra-court appeal preferred by the respondent was dismissed on April 7, 2017 but the Court directed the appellant to grant another opportunity of hearing to the respondent to place his version before the Appointing Authority. It is the said opportunity
- C granted to the respondent which is the subject matter of challenge in the present appeal.

6. Before the appeal could be decided on April 7, 2017, an order of removal from service was passed on May 2, 2016 *inter alia* on the ground that the respondent has committed serious lapses which resulted
- D to perpetration of frauds, such acts are in gross violation of extant norms of the Bank and resulted undue gain to third parties.

7. Learned counsel for the appellant relied upon the judgment of this Court in ***Bank of India v. Apurba Kumar Saha***¹ to contend that the Bank employee who had refused to avail of the opportunities provided
- E to him in a disciplinary proceedings of defending himself against the charges of misconduct involving his integrity and dishonesty, cannot be permitted to complain later that he had been denied a reasonable opportunity of defending himself. The learned counsel for the appellant also relied upon a reasoned judgment passed by this Court in ***State Bank of India & Ors. v. Mohammad Badruddin***² wherein it has been held
- F as under:

- “24. The previous punishments could not be subject matter of the charge sheet as it is beyond the scope of inquiry to be conducted by the Inquiry Officer as such punishments have attained finality in the proceedings. The requirement of second show cause notice
- G stands specifically omitted by 42nd Amendment. Therefore, the only requirement now is to send a copy of Inquiry Report to the delinquent to meet the principle of natural justice being the adverse

¹ (1994) 2 SCC 615

H ² Civil Appeal No. 5604 of 2019 decided on July 16, 2019

material against the delinquent. There is no mandatory requirement of communicating the proposed punishment. Therefore, there cannot be any bar to take into consideration previous punishments in the constitutional scheme as interpreted by this Court. Thus, the non-communication of the previous punishments in the show cause notice will not vitiate the punishment imposed.”

8. On the other hand, learned counsel for the respondent relied upon an order passed by this Court in *State Bank of India & Ors. v. Ranjit Kumar Chakraborty & Anr.*³ wherein the order of removal was set aside for the reason that before imposing the punishment of major penalty, the delinquent was not heard. In response thereto, learned counsel for the appellant relied upon judgment passed by this Court in *State Bank of India & Ors. v. B.R. Saini*⁴ wherein said judgment was explained and held as under:

“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.

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³ (2018) 12 SCC 807

⁴ (2018) 11 SCC 83

- A 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.”
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9. We have heard the learned counsel for the parties and find that the direction issued by the Division Bench to grant another opportunity is not tenable in the facts of the present case.

- C 10. The learned Single Bench has set aside the order of punishment as well as the penalty order directing the employer to serve a notice before imposing penalty. The respondent avoided availing the said opportunity when offered on March 24, 2016, April 7, 2016 and April 22, 2016. Once opportunity has been granted to the respondent, he is not entitled to another opportunity on the ground of compassion. The only reasoning given by the Division Bench is ‘justice demands’ that the respondent be given one last opportunity to place his version. The respondent has lost his chance to put his version before the Competent Authority when called upon by the Authority to do so. Time and again opportunity of hearing cannot be granted on the pretext of justice. The delaying tactics cannot be rewarded in such a manner. Once the respondent has failed to avail of opportunity of hearing granted, the Bank cannot be directed to give another opportunity for the sake of justice. Therefore, we find that the directions contained in Para 18 of the judgment passed by the Division Bench are not sustainable and the same are set aside.
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- F 11. The allegations of financial irregularities against the respondent run into crores of rupees under multiple heads. The inquiry officer has found ten charges proved whereas six charges have not been proved. Because of grave and serious allegations of financial irregularities, the order of removal cannot be said to be unjust.
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- H 12. Even though, the judgment of the learned Single Bench finding fault with the order of removal as affirmed in the appeal, cannot be said to be justified in view of the judgment of this Court in the case of *Mohammad Badruddin* but since the Bank has not filed an appeal

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against such judgment, therefore, the correctness of the said judgment is not being examined in the present appeal which is directed against judgment of Division Bench of Calcutta High Court. A

13. In view thereof, the present appeal is allowed.

Nidhi Jain

Appeal allowed. B