

Gen.Manager,Punjab & Sind Bank & Ors vs Daya Singh on 28 July, 2010

Bench: R.V. Raveendran, H.L. Gokhale

THE GENERAL MANAGER (P) PUNJAB & SIND BANK & ORS.

v.

DAYA SINGH

(Civil Appeal No. 4120 of 2007)

JULY 28, 2010

[R.V. Raveendran and H.L. Gokhale, JJ.]

2010(9) SCR 71

The Judgment of the Court was delivered by

GOKHALE J. 1. This appeal seeks to challenge the judgment and order

dated 25.01.2007 rendered by a Division Bench of Allahabad High Court allowing Civil Writ Petition No. 2846/2004 filed by the respondent.

respondent at the relevant time in 1997-99 was working as a Manager of a Branch of Punjab & Sind Bank in Kanpur and he was directed to be dismissed for misconduct after a departmental inquiry vide order dated 6th June, 2003. The respondent had challenged this order and two subsequent orders in his writ petition to the High Court and these orders have been set aside by the impugned judgment and order. Being aggrieved by the same, this appeal has been filed by the General Manager (P) on behalf of Bank. Apart from setting aside order of dismissal, High Court directed the reinstatement of the respondent. The respondent moved a contempt petition for non-implementation thereof. This Court vide its order dated 7th May, 2007 has stayed the contempt proceedings. Subsequently, leave was granted on appellant's Special leave petition on 6th September, 2007. Mr. Rajiv Nanda, learned Counsel has appeared for the appellant. The respondent has appeared in person.

Short facts leading to this appeal

2. As stated above, the respondent was working as a Manager of the appellant's Branch (earlier an

extension counter) at Guru Nanak Girls Degree College, Sunder Nagar, Kanpur. In a vigilance inspection, it was found on 8th of March, 1999 that some 20 loans to the tune of Rs.16.48 lacs were disbursed to some persons against FDRs though the FDRs were in the names of altogether different persons. It was also seen that the withdrawals which were allowed, were far in excess over the amounts in the FDRs. All those entries were in the hand-writing of the respondent.

3. On 9th of March, 1999, when the Zonal Manager, Lucknow, telephonically made further inquiries with the respondent, immediately thereafter, the respondent left the Branch by leaving behind a letter of voluntary retirement dated 9th March, 1999 without handing over the charge of the articles and documents of the Branch to anybody else. He did not report for duty any time thereafter, although a telegram was sent to him on 11th March, 1999 that he should join immediately. He was, therefore, suspended on 12th March, 1999. An FIR was lodged on 13th March, 1999 and the respondent was arrested along with the Cashier Mr. K.P.Singh.

4.The appellant Bank issued a charge-sheet to the respondent containing the following charges :

(i) He sanctioned demand loan against twenty non-existent FDR's amounting Rs.16.48 Lac to the fictitious persons. Thus he has misappropriated Rs.16.48 lac by way of sanctioning demand loans against non-existent FDRs without any security.

(ii) He has left the Branch on 9th March, 1999 without handing over the charge of articles and documents of Branch.

(iii) He has left his station of posting without authorization, and he is absconding from the services since 09.03.1999.

(iv) He stands a guarantor to the loan sanctioned to M/s Mark Tubes, at Branch office Gurgaon. The loan was sanctioned against his surety for which he has not obtained prior permission from the competent authority. The account turned into NPA account and he has not made sincere efforts to ensure the recovery of this loan amount, and

(v) He has taken guarantee of his wife named Mrs. Satvinder Kaur who has taken a loan from Bank of India, Tilak Nagar, New Delhi-110018 in the name of M/s Paper Products. He has never sought a permission from competent authority for standing as guarantor.

The inquiry could not start earlier since the respondent was in judicial custody till December, 2001. Thereafter, a full-fledged inquiry was conducted.

5. During the inquiry, relevant documents were produced through the concerned officers. The material produced before the inquiry officer with respect to charge No.1 was that some 20 fictitious loans were sanctioned against non-existent FDRs. A chart to that effect has been produced before us as well as photo copies of the documents which were placed before the inquiry officer. Thus in this

compilation at page 21 , there is a photo copy of a page of loan register which shows at serial number 54, an advance of a loan of Rs.75000/- to one Rajinder Kaur against FDR Nos. 115/86 and 116/86. In this very compilation at page No.54, there is photocopy of a page of the FDR ledger wherein the FDR Nos. 115 and 116 are recorded. The FDR No.115 is worth of Rs.10000/- and No. 116 is worth of Rs. 2500/- only. FDR No. 115 in the name of one Nand Kumar whereas FDR No.116 is in the name of one Hardeep Satija. Thus as can be seen, whereas the amounts in the two FDRs were only Rs.12500/- together, the loan advanced was Rs.75000/- and that too to a third party one Rajinder Kaur in whose name either of the FDRs do not stand. The above referred two extracts of the ledger are brought on record during the inquiry as Management Exhibits, MEX B-1 and MEX F-1.

6. These amounts are stated to have been handed over to the respondent by the Cashier of the Bank one K.P. Singh on 18 occasions and by one Mr. Dixit on two occasions. Mr. K.P. Singh has deposed during the departmental inquiry. He has proved the above referred two extracts. He has stated that the respondent used to ask him to get such cash as against FDRs and he used to make the cash available to him. Thus in all 20 ledger entries were brought on record and exhibited showing the withdrawals permitted to some persons and the ledger entries showing the names of altogether different persons in whose names the FDRs stood and also that the FDR amounts were for less than the amount allowed to be withdrawn. The inquiry officer has dealt with this material on record in the following words in his report :

"Presenting officer relied on MEX A 1-20 MEX BI to 10; MEX C 1 to 20, MEX F 1 to 20 and MEX G-1 to 20. These are the documents showing all the entries by CSO in his own handwriting. The presenting officer also brought in MW1 to prove payments made to CSO by MW1 through Exhibits marked MEX C 1 to C4; MEX C-6 to C-7; MEX C-11 to C-20. Through exhibits MEX B1 to B10 presented that there were no records through which FDRs kept as security could be proved. P.O. in his plea brought in MEX E-1 to MEX E-3 to show that FDRs against which the loan were raised too did not belong to borrower and one was paid to the beneficiary on 11.07.96. P.O. argued advance was made were non- existent."

7. Although, the respondent participated in the inquiry and filed his reply therein as well as a detailed counter in this Court, there is no explanation whatsoever as to how these 20 persons were given the loans when the FDRs were not in their names and also why the loan amount is far exceeding the amount that was deposited. The only submission of the respondent was that when earlier inspections were carried out, no such allegation was made. He submitted that he had increased the business at the extension counter at the College and that is how it had become a Branch, yet his work was not being appreciated. However, no particulars were given to pin point any mala fides. Besides, all these entries were in his hand-writing and there was no explanation in that behalf. As far as the deposition of Mr. K.P. Singh is concerned, it was sought to be contended that bank officers had stood surety for his bail and, therefore, his evidence should not be accepted. That obviously could not be, in view of the documentary evidence, which was in his own hand-writing and which showed that the loan advances were far more than the amounts in the FDRs and they were given to persons other than those in whose names, the FDRs were issued.

8. The inquiry officer, therefore, concluded in his report as follows :

`Assessment of evidence of presenting officer's and CSO weighs heavily on P.O. side. He has produced the documents as available in the branch and proved that advances made were having incomplete details on each documents. The C.S.O. has based himself on premises and has nothing to present in his defence.

On going through both written and oral evidence before me, I posed queries before CSO, whether he can produce any evidence of FDRs from Bank records. The answer was negative and evasive. Further query was raised whether the borrowers could be produced to prove his contention. The reply again was negative. Hence evaluating the document before me and other relevant evidence, I am of the opinion that charge number 1 based on allegations 1 to 20 stands proved'.

9. Similarly, with respect to the charges Nos. 2 and 3 of his going away from the branch on 9th March, 1999 without handing over charge and absconding thereafter, the only submission forthcoming was that when the Zonal Manager talked to him, he felt reprimanded and, therefore, he sent his letter of V.R.S. There was however no explanation as to how he could walk away without handing over the charge and why he did not turn up even though he was given a telegram to join on the duty.

10. As far as the charge number 4 and 5 are concerned, it was alleged against him that he has stood guarantor firstly for a company in one case and then for his wife which was done without the permission from the competent authority. The only defence of the respondent was that there was no harm to the bank in this, and if necessary the amount be adjusted from his retirement benefit or otherwise after reinstatement by regular installments. This was no explanation and this was against the service rules and hence the inquiry officer held that the charges were proved.

11. After considering the inquiry report, the Zonal Manager who was the disciplinary authority came to the conclusion that the respondent has committed misconduct under Clause 3(1) and 15(v) read with Regulation No.24 of the Punjab & Sind Bank Officers Employees (Conduct) Regulations 1981. He concurred with the findings of the inquiry officer. Therefore, by the order dated 6th June, 2003, he imposed the penalty of dismissal from service alongwith recovery of pecuniary loss under `Punjab and Sind Bank officer/employees (Discipline and appeal) Regulation 1997. That order has been subsequently confirmed in the internal appeal and in review.

12. As stated above, all these three orders were challenged in the above writ petition in the High Court, and have come to be set aside. It was contended on behalf of the respondent that the report submitted against him by the inquiry officer was too sketchy and it did not contain any reasons in support of the findings arrived at by the inquiry officer. The High Court accepted that submission. It held that the inquiry officer merely stated in his report that certain documents in support of each of the charges were presented and also that the submissions of the petitioner in reply were not tenable and therefore, the charges stood proved. The High Court held that the documents produced were neither detailed nor their nature was explained. It further held that there was no discussion and

much less any analysis of the evidence presented. The Court held that no specific finding has been recorded on the basis of the evidence to establish the guilt of the respondent. The absence of good reason was held to be in breach of the principles of natural justice. Therefore, the order was set aside.

13. The High Court directed the appellant to reinstate the respondent though for the limited purpose of holding the inquiry afresh. That was following the law laid down in *Managing Director ECIL Hyderabad Vs. B. Karunakar* AIR 1994 SC 1074. It directed the appellant to hold a fresh inquiry and then to pass appropriate orders. It is this order which has been challenged before us.

Rival Contentions

14. Mr. Nanda, learned counsel appearing for the appellant has taken us through the material which was there before the inquiry officer and which was also placed before the High Court and also before this Court. He has referred to the report of the inquiry officer and as to how the charges were established. The relevant paragraphs therefrom are already quoted above. Mr. Nanda, therefore, raised a question - Can this report in any way be said to be sketchy? He submitted that the inquiry officer may not have given separate finding based on each and every document, but he has referred to all the documents produced in the inquiry and considered them. He pointed out that the report clearly shows that a complete co-relation was established between the ledger entries in the loan register and the entries in the FDR register by producing the relevant pages of both these registers. All those entries were noted to be in the hand-writing of the respondent. It clearly showed that in 20 cases, loans were disbursed to persons in whose name there were no FDRs and the amounts released were far in excess. The respondent had not disputed those entries. The inquiry officer has, therefore, given the necessary finding and the High Court has clearly erred in holding that no specific finding had been recorded on the basis of the evidence to establish the guilt of the respondent. Mr. Nanda has also stated that once the charges were established, the High Court had no jurisdiction to interfere in the decision of the Bank authority and he relied upon the judgments of this Court in *Suresh Pathrella Vs. Oriental Bank of Commerce*, AIR 2007 SC 199, *State Bank of India Vs. Bela Bagchi* (2005) 7 SCC 435 and *Damoh Panna Sagar Rural Regional Bank Vs. Munna Lal Jain* (2005) 10 SCC 84.

15. The respondent who appeared in person reiterated his submissions which were made during the inquiry. He submitted that he had improved business at the extension counter to make it a branch, that he was being made a victim and that the documents did not establish the misconduct. On a query from the Court he could not dispute that the relevant entries were in his hand-writing. With a view to satisfy ourselves, we asked him as to what was his explanation with respect to those entries. He had no particular answer to offer. His only submission was that no borrower had been examined in support of the allegations against him.

Resultant Conclusions

16. In view of what is stated above, it is very clear that the Bank had taken the necessary steps to establish the misconduct before the inquiry officer. The relevant documents including ledger entries

were produced through the concerned witnesses. The respondent fully participated in the inquiry. He had no explanation to offer during the course of the inquiry or any time thereafter. When all the relevant entries were in the handwriting of the respondent, the Bank did not think it necessary to call the borrowers. In fact, as the inquiry officer states, the respondent should have produced the borrowers if he wanted to contend anything against the documentary evidence produced by the Bank. In the circumstances, the conclusions arrived at by the inquiry officer as stated above could not have been held as without any evidence in support. The High Court has clearly erred in holding that the documents produced were neither detailed nor their nature was explained.

17. We are rather amazed at the manner in which the High Court has dealt with the material on record. The Inquiry Officer is an officer of a Bank. He was considering the material which has placed before him and thereafter, he has come to the conclusion that the misconduct is established. He was concerned with a serious charge of unexplained withdrawals of huge amounts by a Branch Manager in the name of fictitious persons. Once the necessary material was placed on record and when the charge-sheeted officer had no explanation to offer, the Inquiry Officer could not have taken any other view. The order of a bank officer may not be written in the manner in which a judicial officer would write. Yet what one has to see is whether the order is sufficiently clear and contains the reasons in justification for the conclusion arrived at. The High Court has ignored this aspect. Absence of reasons in a disciplinary order would amount to denial of natural justice to the charge-sheeted employee. But the present case was certainly not one of that category. Once the charges were found to have been established, the High Court had no reason to interfere in the decision. Even though there was sufficient documentary evidence on record, the High Court has chosen to hold that the findings of the Inquiry Officer were perverse. A perverse finding is one which is based on no evidence or one that no reasonable person would arrive at. This has been held by this Court long back in *Triveni Rubber & Plastics vs. CCE* AIR 1994 SC 1341. Unless it is found that some relevant evidence has not been considered or that certain inadmissible material has been taken into consideration the finding cannot be said to be perverse. The legal position in this behalf has been recently reiterated in *Arulvelu and Another vs. State Represented by the Public Prosecutor and Another* (2009) 10 SCC 206. The decision of the High Court cannot therefore be sustained.

18. As held in *T.N. C.S. Corporation Ltd. vs. K. Meerabai* (2006) 2 SCC 255 the scope of judicial review for the High Court in departmental disciplinary matter is limited. The observation of this Court in *Bank of India vs. Degala Sriramulu* (1999) 5 SCC 768 are quite instructive:

"Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that

finding. The court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. In *Union of India v. H.C. Goel* (AIR 1964 SC 364, (1964) 4 SCR 718). the Constitution Bench has held:

a. "The High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not."

19. In a number of cases including *State Bank of India vs. Bela Bagchi* (supra) this Court has held that a bank employee has to exercise a higher degree of honesty and integrity. He is concerned with the deposits of the customers of the Bank and he cannot permit the deposits to be tinkered with in any manner. In *Damoh Panna Sagar Rural Regional Bank's case* (supra) the Manager of a Bank who had indulged in unauthorized withdrawals, subsequently returned the amount with interest. Yet this Court has held that this conduct of unauthorized withdrawals amounted to a serious misconduct. Same is the case in the present matter. There was a clear documentary evidence on record in the handwriting of the respondent which established his role in the withdrawal of huge amounts for fictitious persons. The ledger entries clearly showed that whereas the FDRs were in one name, the withdrawals were shown in the name of altogether different persons and they were far in excess over the amounts of FDRs. The respondent had no explanation and, therefore, it had to be held that the respondent had misappropriated the amount. In spite of a well reasoned order by the Inquiry Officer, the High Court has interfered therein by calling the same as sketchy. The High Court has completely overlooked the role of the bank manager as expected by this Court in the aforesaid judgments.

20. In these facts and circumstances, we allow this appeal and set aside the impugned judgment and order passed by the Division Bench of the Allahabad High Court. The petition filed by the respondent in the High Court will stand dismissed. Consequently, contempt proceedings initiated by him will also stand dismissed.