

State Bank Of India And Ors vs Narendra Kumar Pandey on 14 January, 2013

Equivalent citations: AIR 2013 SUPREME COURT 904, 2013 LAB. I. C. 957

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Bench: K.S. Radhakrishnan, Dipak Misra

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 263 OF 2013
[Arising out of SLP (Civil) No. 34118 of 2011]

State Bank of India and Ors.	Versus	.. Appellant(s)
Narendra Kumar Pandey		.. Respondent(s)

J U D G M E N T

K. S. Radhakrishnan, J.

Leave granted.

2. We are, in this case, concerned with the legality of the judgment of the High Court setting aside an order dated 11.03.1999 passed by the State Bank of India dismissing the charged officer (respondent) from service in exercise of powers conferred under Article 226 of the Constitution of India.

3. The charged officer, herein, while he was functioning as the Deputy Manager of the Bank was served with a charge-sheet dated 15.02.1995 by the Joint Manager (Operations) [Disciplinary Authority] stating that while he was posted as officer JMGS-I at Government Business Branch, Kanpur, and Accountant and officiating Branch Manager at Kalpi Road (Kanpur) Branch from 21st May 1985 to 20th October 1987 and 21st October 1987 to 22nd May 1991 respectively had failed to discharge his duties with utmost integrity, honesty, devotion and diligence and acted in a manner unbecoming of a Bank Official and highly prejudicial to the Bank's interest in deliberate violation of Rules 50(3), 50(4), 50(9) and 60(2) of the State Bank of India Officers Service Rules (in short 'the Service Rules').

4. Altogether, 12 charges were framed against him. Charges are given under for easy reference:

Charge No.1 You raised a number of spurious entries by debiting LOCL/LIT A/c at Kalpi Road Branch, Kanpur and afforded fictitious credit to the Current Account No.7/12 in the name of Shri O.S. Srivastava and Savings Bank Account No. 9095 in

the name of Shri Surinder Kumar. Both the account holders were fictitious/non-existent. Although the account opening form in the case of Shri O.S. Srivastava is not traceable, it is apparent from the account opening form of Shri Surinder Kumar, that the account was allowed/authorized by you. It shows your alleged involvement in the fraud.

Charge No.2 You granted and opened under your authentication Demand Loan Accounts in the name of Fictitious/non-existent persons against pledge of fictitious NSCs with a view to avail yourself the Bank's funds unauthorisedly and in an illegal manner.

Charge No.3 You availed a conveyance loan for Rs.78,000/- for purchase of a Car. The proceeds of the loan were credited to your account on 28.05.1988 and were withdrawn by you in cash the same day but you did not purchase the vehicle within a month of availment of loan as per Bank's instructions.

i) You got issued a number of cheque books on your savings bank and current account, although only few cheque leaves were used by you. The requisite cheque book requisition slips or your specific requests for issue of cheque books are not available.

Thus, your act of getting issued several cheque books to yourself without exhausting the earlier ones, is highly irregular on your part and in contravention of the Bank's laid down instructions

ii) You utilized a cheque leaf bearing no. 422276 for drawing on your savings bank account no. 5603 with Kalpi Road Branch although the cheque book containing this cheque leaf was issued to some other account holder and has been recorded as "surrendered and destroyed" in the Branch books. Thus, you have taken unauthorized possession of the cheque which was incorrectly shown as destroyed in the Branch books.

iii) A few Savings Bank Cheque books have been found to be missing from the branch as no record for issue of these cheque books to account holders is there in the Branch Books.

Charge No.5 You deliberately withheld DD Purchase documents received at the Branch by not responding these by debit to the relative accounts, with a view to providing undue benefits to the customers at the bank's cost.

Charge No.6 You misutilised the Bank's funds by negotiation of fake instruments as DD on Patna. These DDs were returned unpaid subsequently and the amounts were made good by you either in cash or through your savings bank account.

Charge No.7 You negotiated cheques drawn on local branches at Kanpur as DD to yourself in utter disregard to Bank's laid down instructions.

Charge No.8 Although no STDR/TDR existed in the name of Shri O.S. Srivastava in branch books, you made false noting in the cheque referred and returned register against the entries in respect of two cheques drawn by him on his current account to give misleading information that Shri Srivastava had STDR/TDR. The balance in the account of Shri O.S. Srivastava was not sufficient to pay these cheques. Due to the false and misleading information furnished by you to the then Branch Manager, these cheques were allowed on both the occasions.

Charge No.9 Your savings bank account no. 5603 shows numerous debit/credit transactions (other than salary and allowances) which you did not explain (sic) for heavy amounts.

GOVERNMENT BUSINESS BRANCH, KANPUR Charge No.10 Your Savings Bank Account No.38 with Govt. Business Branch (Kanpur) shows frequent credit transactions (both cash and transfer) other than salary for heavy amounts which you could not explain properly.

Charge No.11 In your Savings Bank Account No. 38, while most of the withdrawals from the account were made by way of withdrawal forms, you got 4 cheque books issued and utilized approximately 15 cheques only. You did not advise, how the remaining cheque, were utilized. It is noticed that out of unutilized cheques, one cheque bearing no. 835524 was issued by you on 17.9.1987 favouring SBI SEE Co-op. Credit Society Ltd. Unnao for Rs.500/- on Kalpi Road (Kanpur) Branch, where no Savings Bank Account in your name existed in the books of that Branch. Thus, you have misutilised the facility, and issued the cheque without funds in your account.

Charge No.12

i) You issued a Cheque no.315083 dated 4.4.86 for Rs.6030.08 favouring M/s Society Jewellers which was returned unpaid due to insufficient balance in your account no.38. On representation of the cheque on 23.4.86, it was paid after cash deposit of Rs.6,000/- by you. Thus, you issued cheque without maintaining sufficient balance in your account.

ii) You issued cheque no. 315830 dated 23.6.87 for Rs.4,061/- favouring M/s Bhagat Ram Jai Narain without maintaining sufficient balance in your savings Bank Account No.38. The cheque could be paid when you deposited Rs.14,000/- cash on 24.6.87.

iii) Your such actions were highly prejudicial to the Bank's interest and unbecoming of Bank Official.

5. Along with the chargesheet, statements of allegations were also annexed.

6. The charged officer was informed that it was decided to hold a departmental inquiry against him in terms of Rule 68(2)(ii) of the Service Rules read with Rule 67 in support of the above-mentioned charges. The charged officer was given 15 days time to submit his statement of defence. The charged officer submitted his reply on 29.03.1995 denying all the charges. On 24.03.1995, the charged officer sought permission from the Bank for inspection of the relevant documents, which was permitted by the Bank on 29.04.1995. The Disciplinary Authority vide letter No. Vig/96/11 dated 08.05.1996 appointed the Inquiring Authority to inquire into the charges levelled against the charged officer as

per the charge sheet dated 15.02.1995. The Inquiring Authority issued a notice dated 11.05.1996 to the charged officer informing him of the holding of the preliminary hearing on 11.06.1996. From 11.06.1996 to 07.11.1997, the Inquiring Authority conducted inquiry on 17 dates and many a times the inquiry was adjourned on the request of the charged officer. He chose to remain absent on as many as 7 dates of hearing.

7. We find from the records that the Inquiring Authority permitted the charged officer to inspect the records in the presence of investigating officer and fixed the date on 20.06.1997. Due to some inconvenience, nothing transpired on 20.06.1997 and another date was fixed i.e. 21.07.1997. Consequently, last opportunity was given to the charged officer to go through the documents and submit a list of documents and witnesses. The charged officer, it is seen, did not avail the opportunity and remained absent on 21.07.1997. On 06.11.1997, the charged officer walked out of the inquiry. The Inquiring Authority, however, continued and concluded ex parte on 07.11.1997.

8. We notice that the charged officer did not even choose to nominate his defence representative in spite of various opportunities given by the Inquiring Authority. The presenting officer had sent his written brief on 08.12.1997 but no written brief was sent by the charged officer. He was given time upto 14.01.1998. The presenting officer had informed the Inquiring Authority that a list of bank documents was forwarded to the charged officer vide his letter dated 21.05.1997 but the charged officer did not accept the same. The presenting officer was in fact present on 13.09.1997 and 14.06.1997 in the bank office but the charged officer did not report for the inspection of the bank documents on those days as well. The Inquiring Authority had written a letter dated 25.06.1997 informing the charged officer that the presenting officer had been instructed to forward a list of bank documents and witnesses by 30.06.1997 and get the bank's documents inspected by him in his presence before 12.07.1997 that was the last opportunity given to the charged officer. The same was also not availed of. In the said circumstances, the Inquiring Authority had no other alternative but to conduct the inquiry ex parte. The presenting officer then produced original documents before the Inquiring Authority and after elaborate consideration of the charges, the statements of allegations and the supporting documents and after hearing the presenting officer, the Inquiring Authority came to the conclusion that charge nos. 1, 2, 3, 5, 7, 8, 9, 10 and 12 were proved. Charge nos. 4, 6 and 11 were found to be partly proved. The Inquiring Authority vide his report dated 15.01.1998 concluded that the charged officer had failed to discharge his duties with utmost integrity, honesty, devotion and diligence and acted in a manner unbecoming of a bank official and highly prejudicial to the Bank's interest. The Disciplinary Authority later considered the relevant records of the case, including the findings of the Inquiring Authority and the submission made by the charged officer and submitted his recommendation to the appointing authority. The appointing authority, after going through the relevant records of the case, the charge-sheet, proceedings of the inquiry, written briefs of the presenting officer, the findings of the Inquiring Authority etc., decided to dismiss the charged officer from service in terms of Rule 67(j) of the Service Rules read with Rule 68 of the Service Rules. The order was passed to that effect on 11.03.1999. The charged officer was also informed that he has a right of appeal to the appellate authority as per Rule 69 of the Service Rules.

9. The charged officer without availing of the remedy of a statutory appeal approached the High Court under Article 226 of the Constitution of India. The High Court, however, took the view that

the presenting officer had failed to discharge his obligation of making available the list of all the documents and witnesses to the charged officer. The Court held Rule 68(2)(ix) contemplates that the Inquiry officer must ensure supply of list of documents and witnesses to be relied on by Bank in support of its charges. The Court took the view that the presenting officer did not place anything on record to show when the list was made available to the charged officer. Further, it was also noticed that the bank had failed to examine any witnesses in respect of the charges and, therefore, the findings recorded by the Inquiring Authority could not be sustained. The Court, therefore, allowed the writ petition and quashed the impugned order dated 11.03.1999 with liberty to hold a fresh inquiry. There was a further direction to the Bank to pay arrears of subsistence allowance treating the period of his absence as deemed suspension.

10. Shri Harin P. Rawal, learned Additional Solicitor General appearing for the Bank, submitted that the High Court has committed an error in interfering with the order of dismissal especially when the charged officer had an alternative remedy of appeal under Rule 69 of the Service Rules. Learned counsel also submitted that the list of bank documents for inspection had been enclosed by the presenting officer vide letter dated 21.05.1997 to the charged officer which the charged officer had refused to accept. Further, it was also pointed out that vide letter dated 30.05.1997, the presenting officer had enclosed the list of bank documents and requested the charged officer to inspect the same at the relevant branch which also the charged officer refused to accept. Learned counsel also pointed out that the bank had given sufficient opportunities to inspect those documents in the bank's office, the said fact was taken note of by the Inquiring Authority. Learned counsel also pointed out that where a bank employee who had refused to avail of the opportunities provided to him in a disciplinary proceeding of defending himself against the charges of misconduct cannot be permitted to complain later that he had been denied a reasonable opportunity of defending himself of the charges levelled against him. Learned counsel also pointed out that in a disciplinary proceeding, the standard of proof required is preponderance of probability and not proof beyond reasonable doubt. The High Court under Article 226 of the Constitution of India was not justified in setting aside that order especially when the charged officer could have appealed to the appellate authority under Rule 69 of the Service Rules.

11. Respondent appeared in-person and submitted that there is no illegality in the order passed by the High Court calling for interference by this Court. The respondent pointed out that cogent reasons had been stated by the High Court in setting aside the order of dismissal which is unassailable. Further, it was pointed out that under Rule 68(2)(ix), the Inquiry Officer must ensure supply of the list of documents and witnesses relied by Bank to support the charges. There is nothing in the record of proceeding which would show that the presenting officer had produced the list of documents before the Inquiring Authority and hence no copy of the same was made available to the charged officer as well. Further, it was also pointed out that the burden is on the bank to establish the charges levelled against the charged officer which the bank had not discharged and the High Court has rightly set aside the order of dismissal.

12. The first infirmity pointed out by the High Court was that charge- sheet did not mention anything about the documents or the witnesses which/whom it proposed to rely to prove the charges, nor appended any list of documents or witnesses. The presenting officer had also,

according to the High Court, failed to provide the list of documents and witnesses to the charged officer. Further, the High Court also pointed out that minutes of the proceedings would indicate that forty eight more documents were produced before the Inquiring Authority and the rest of the documents were permitted to be produced on 07.11.1997. On 07.11.1997, thirty four more documents were produced and marked as Ex. 51 to 84. The High Court also pointed out that no witness was examined by the Bank in support of charges and hence to hold the charges relating to Government Business Branch proved was in fact a finding supported with no evidence.

13. State Bank of India Officers Service Rules are framed in exercise of powers conferred under Section 43(1) of State Bank of India Act, 1955. Chapter XI of the Service Rules deals with conduct, discipline and appeal. Decision to initiate and procedure for disciplinary action is dealt with in Rule 68 of the Service Rules. Admittedly, the provision of Rule 68(3) had been complied with and the charged officer was given time to file objections to the charges levelled against him. The charged officer filed his reply on 29.03.1995 for the charges levelled against him. Rule 68(2)(v) says that the disciplinary authority shall where it is not the Inquiring Authority, forward to the Inquiring Authority the following documents:

- a) A copy of the articles of charge and statements of imputations of misconduct;
- b) A copy of the written statement of defence, if any, submitted by the officer;
- c) A list of documents by which and list of witnesses by whom the articles of charge are proposed to be substantiated;
- d) A copy of statements of the witnesses, if any;
- e) Evidence proving the delivery of the articles of charge under clause (iii);
- f) A copy of the order appointing the “Presenting Officer” in terms of clause (vi).

14. Rule 68(2)(a) states that the Inquiring Authority shall where the officer does not admit all or any of the articles of charge furnish to such officer a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be proved.

15. Rule 68(2)(xiii) states that on the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the Bank. The witnesses produced by the presenting officer shall be examined by the presenting officer and may be cross-examined by or on behalf of the officer. The presenting officer shall be entitled to re-examine his witnesses on any points on which they have been cross-examined, but not on a new matter without the leave of the Inquiring Authority. The Inquiring Authority may also put such questions to the witnesses as it thinks fit.

16. Rule 68(2)(xix) states that if the officer does not submit the written statement of defence referred to in clause (iii) on or before the date specified for the purpose or does not appear in

person, or through the officer's representative or otherwise fails or refuses to comply with any of the provisions of these rules which require the presence of the officer or his representative, the Inquiring Authority may hold the enquiry ex parte.

17. We may in the light of the above-mentioned statutory provisions examine the correctness of the order passed by the High Court. The charged officer, admittedly, did not choose to nominate his defence representative in spite of several opportunities given by the Inquiring Authority nor had he submitted any written statement to the Inquiring Authority. Time was given upto 14.01.1998 to do so but he had not availed of that opportunity. Neither the charged officer nor any defence representative appeared before the Inquiring Authority. The arguments that were raised before the High court of non-compliance of the procedure, could have been raised by the charged officer before the Inquiring Authority, but the same was not done and he had not co-operated with the inquiry proceedings. In the said circumstances, the Inquiring Authority was entitled to hold the enquiry ex parte as provided under Rule 68(2)(xix).

18. We are of the view that the High Court has committed an error in holding that the charge-sheet should have mentioned about the details of the documents and the names of the witnesses which the Bank proposed to examine and a list to that effect should have been appended to the charge sheet. We may point out that the charge-sheet need not contain the details of the documents or the names of the witnesses proposed to be examined to prove the charges or a list to that effect unless there is a specific provision to that effect. Charge-sheet, in other words, is not expected to be a record of evidence. Fair procedure does not mean giving of copies of the documents or list of witnesses along with the charge-sheet. Of course, statement of allegations has to accompany the charge-sheet, when required by the Service Rules.

19. We notice the presenting officer had informed the inquiring authority that the list of bank's documents was forwarded to the charged officer vide his letter dated 21.05.1997 but the charged officer did not accept that letter. Charged officer's related letter would also indicate that he was advised not to accept the letter along with its enclosure. Presenting officer had again sent the list of bank's documents to the charged officer vide his letter dated 27.06.1997, the same was also not responded to by the charged officer. The Inquiring Authority further directed the presenting officer to make arrangements for the charged official to inspect the bank's documents. Consequently, the presenting officer vide his letter dated 30.05.1997 and 27.06.1997 made arrangements for inspection of bank's documents on 13.06.1997, 14.06.1997, 09.07.1997 and 10.07.1997 respectively. Presenting officer was also present for facilitating the inspection but the charged officer did not turn up for inspection of the bank's documents. In fact the Inquiring Authority himself had written a letter dated 25.06.1997 to the charged officer advising him that the presenting officer had again been instructed to forward the list of bank's documents and witnesses by 30.06.1997 and get the bank's documents inspected by him in his presence before 12.07.1997 which was the last opportunity given to the charged officer. One more opportunity was given by the Inquiring Authority to the charged officer to submit the list of defence documents and witnesses by 19.07.1997 but the charged officer did not give any list of defence documents and witnesses and on most of the days, the charged officer did not appear before the Inquiring Authority. On 06.11.1997, the charged officer walked out of the inquiry. Under such circumstances, the Inquiring Authority had no other

alternative but to hold the inquiry ex parte. We are of the view that the Inquiring Authority and the presenting officer had followed procedures laid down under Rules 68(2)(v), 68(2)(ix)(a), 68(2)(viii) and 68(2)(xix) of the Service Rules.

20. We are of the view that the High Court also committed an error in holding that since no witness was examined in support of charges, it was a case of no evidence. In an ex parte inquiry, in our view, if the charges are borne out from documents kept in the normal course of business, no oral evidence is necessary to prove those charges. When the charged officer does not attend the inquiry, then he cannot contend that the Inquiring Authority should not have relied upon the documents which were not made available or disclosed to him. Of course, even in an ex parte inquiry, some evidence is necessary to establish the charges, especially when the charged officer denies the charges, uncontroverted documentary evidence in such situation is sufficient to prove the charges.

21. The Inquiring Authority has examined each and every charge levelled against the charged officer and the documents produced by the presenting officer and came to the conclusion that most of the charges were proved. In a departmental inquiry, the disciplinary authority is expected to prove the charges on preponderance of probability and not on proof beyond reasonable doubt. Reference may be made to the judgments of this Court reported in *Union of India v. Sardar Bahadur*; (1972) 4 SCC 618 and *R.S. Saini v. State of Punjab and Others*; (1999) 8 SCC 90. The documents produced by the bank, which were not controverted by the charged officer, supports all the allegations and charges levelled against the charged officer. In a case, where the charged officer had failed to inspect the documents in respect of the allegations raised by the bank and not controverted it is always open to the Inquiring Authority to accept the same.

22. In *Bank of India v. Apurba Kumar Saha* ; (1994) 2 SCC 615, this court held:

“A bank employee who had refused to avail of the opportunities provided to him in a disciplinary proceeding of defending himself against the charges of misconduct involving his integrity and honesty, cannot be permitted to complain later that he had been denied a reasonable opportunity of defending himself of the charges levelled against him and the disciplinary proceeding conducted against him by the bank employer had resulted in violation of principles of natural justice of fair hearing”.

23. The High Court, in our view, under Article 226 of the Constitution of India was not justified in interfering with the order of dismissal passed by the appointing authority after a full-fledged inquiry, especially when the Service Rules provide for an alternative remedy of appeal. It is a well acceptable principle of law that the High Court while exercising powers under Article 226 of the Constitution does not act as an appellate authority. Of course, its jurisdiction is circumscribed and confined to correct an error of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of the principles of natural justice. In *State Bank of India and Others v. Ramesh Dinkar Punde* (2006) 7 SCC 212, this Court held that the High Court cannot re-appreciate the evidence acting as a court of Appeal. We have, on facts, found that no procedural irregularity has been committed either by the Bank, presenting officer or the Inquiring Authority. Disciplinary proceedings were conducted strictly in accordance with the Service Rules.

24. This court in *State of Andhra Pradesh v. Sree Rama Rao*; AIR 1963 SC 1723 held:

“Where there is some evidence, which the authority entrusted with the duty to hold the inquiry has accepted and which evidence may reasonably support the conclusion that delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence especially when the charged officer had not participated in the inquiry and had not raised the grounds urged by him before the High Court by the Inquiring Authority.”

25. This Court in *Lakshmi Devi Sugar Mills Ltd. v. Pt. Ram Sarup*; AIR 1957 SC 82 held where a workman intentionally refuses to participate in the inquiry, cannot complain that the dismissal is against the principles of natural justice. Once the inquiry proceed ex parte, it is not necessary for the Inquiring Authority to again ask the charged officer to state his defence orally or in writing. We cannot appreciate the conduct of the charged officer in this case, who did not appear before the Inquiring Authority and offered any explanation to the charges levelled against him but approached the High Court stating that the principles of natural justice had been violated.

26. We are also conscious of the fact that even if the Inquiring Authority set the charged officer ex parte that would not absolve him from deciding that the charges levelled against him were proved or not. In other words, no punishment could be imposed without an inquiry. We notice in this case the Inquiring Authority had elaborately considered the charges levelled against the charged officer and also the materials produced by the bank because some evidence is necessary to establish the charges. In some cases, proof may only be documentary and in some cases oral. The requirement of proof depends on the facts and circumstances of each case. Appellant - Bank in this case has succeeded in establishing the charges levelled against the delinquent officer and was rightly dismissed from service which called for no interference by the High Court under Article 226 of the Constitution of India.

27. In view of the above-mentioned reasons, we find it difficult to support the judgment of the High Court. Consequently, the appeal is allowed and the impugned judgment is set aside with no order as to costs.

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..J. (K. S. Radhakrishnan)

..J. (Dipak Misra) New Delhi, January 14, 2013