

State Bank Of India And Ors vs K.P. Narayanan K.Utty on 16 January, 2003

Equivalent citations: AIR 2003 SUPREME COURT 1100, 2003 (2) SCC 449, 2003 AIR SCW 634, 2003 LAB. I. C. 778, 2003 AIR - KANT. H. C. R. 520, 2003 (1) ACE 408, 2003 (2) SERVLJ 36 SC, 2003 (1) SCALE 383, (2003) 6 ALLINDCAS 373 (SC), 2003 (2) ALL CJ 1111, 2003 (1) UJ (SC) 439, (2003) 1 KHCACJ 324 (SC), (2003) 2 SERVLJ 36, (2003) 1 SCR 391 (SC), 2003 (1) SCR 391, 2003 ALL CJ 2 1111, (2003) 1 JT 479 (SC), 2003 (1) JT 479, 2003 (1) SLT 457, 2003 (4) SRJ 548, 2003 (1) UPLBEC 568, (2003) 1 SUPREME 778, 2003 SCC (L&S) 185, (2003) 102 FJR 318, (2003) 96 FACLR 998, (2003) 2 LABLJ 1, (2003) 1 LAB LN 839, (2003) 2 MAHLR 380, (2003) 1 PAT LJR 257, (2003) 3 SCT 743, (2003) 2 SERVLR 59, (2003) 1 UPLBEC 568, (2003) 1 SCALE 383, (2003) 1 JLJR 252, (2003) 2 INDLD 724, (2003) 1 KCCR 591, (2003) 1 CAL LJ 211

Bench: Shivaraj V. Patil, H.K. Sema

CASE NO.:

Appeal (civil) 3781 of 1999

PETITIONER:

STATE BANK OF INDIA AND ORS.

RESPONDENT:

K.P. NARAYANAN K.UTTY

DATE OF JUDGMENT: 16/01/2003

BENCH:

SHIVARAJ V. PATIL & H.K. SEMA

JUDGMENT:

JUDGMENT 2003 (1) SCR 391 The following Order of the Court was delivered.

This appeal is directed against the order dated 11th March, 1999 passed by the Division Bench of the High Court affirming the order passed by the learned Single Judge. The respondent herein was working as a Manager, Grade-I in the appellant Bank. On the allegations of certain misconduct and irregularities, disciplinary proceedings were initiated against him by the appellants. Several charges were framed against him. The Enquiry Officer, after conducting enquiry, submitted a report holding that some of the charges were proved, some of the charges were partly proved and some of the charges were not proved. The disciplinary authority, while accepting the finding of the Enquiry

Officer to the extent that some charges were proved and some of the charges were not proved, however, did not agree with the report of the Enquiry officer as regards the finding that the charges were partly proved. The disciplinary authority held that those were fully proved. In that view, on consideration of the material, the disciplinary authority recommended for dismissal of the respondent from service. Accepting the said recommendation, the competent authority passed an order of dismissal from service. The respondent unsuccessfully appealed against the order of dismissal to the authorities. Thereafter, he filed a writ petition before the High Court challenging the order of dismissal from service. The learned single Judge of the High Court, after hearing learned counsel for the parties, allowed the writ petition accepting the contention that no opportunity was given to the respondent by the disciplinary authority in regard to the charges with which the findings of the Enquiry officer were not agreed to by the disciplinary authority in the light of the judgment of this Court in the case of Punjab National Bank and Ors v. Kunj Behari Misra, [1998] 7 SCC 84. The appellants took the matter in appeal before the Division Bench of the same High Court. The Division Bench of the High Court did not find any good or valid reason to differ from the conclusion arrived at by the learned single Judge and dismissed the appeal following the judgment of the Punjab National Bank aforesaid. Hence this appeal.

Mr. R. Sundaravaradan, learned senior counsel appearing for the appellants strongly contended that providing further opportunity to the respondent by the disciplinary authority, even if it were to disagree with 'the findings of the Enquiry Officer, was not necessary in terms of the regulations governing service conditions of the respondent; not providing an opportunity by the disciplinary authority did not prejudice the case of the respondent in any way. As such the high Court was not justified in setting aside the order of dismissal, particularly, when the respondent had the opportunity before the Enquiry Officer to put forth his case. He also made efforts to distinguish with the case of Punjab National Bank (supra) stating that providing an opportunity would not apply to cases prior to the case of Union of India and Ors. v. Mohd. Ramzan Khan, [1991] 1 SCC 588. He added that this Court in Punjab National Bank case did not deal with the contention raised by the learned counsel for the appellant-Bank in this regard. He relied on the Constitution Bench decision of this Court in State of Orissa v. Bidyabhushan Mohapatra, [1963] Supp. 1 SCR 648.

Per contra, Mr. L. Nageswara Rao, learned senior counsel representing the respondent made submissions supporting and justifying the impugned order. He said that the Constitution Bench decision in the case of Bidyabhushan Mohapatra, above mentioned, is distinguishable; that was a case where this Court set aside the impugned order passed by the High Court in regard to the penalty imposed even on the proved charges. In the present case it is clear from the order of the learned single Judge as well as that of the Division Bench of the High Court that the High Court did not go into the merits of other contentions or the factual aspects. The parties also focused their arguments as to whether an opportunity was to be provided by the disciplinary authority in case the disciplinary authority disagreed with certain findings recorded by the Enquiry Officer. Applying the principle as stated in Punjab National Bank case (supra), as already indicated above, the High Court felt that providing an opportunity by the disciplinary authority was necessary. As is evident from the order of the learned single Judge, which was affirmed by the Division Bench, that the order of dismissal was set aside, however, liberty is given to the appellants to proceed in accordance with law, after giving opportunity to the respondent.

When asked, learned senior counsel for the appellants submitted that Regulation 7(2) of the Punjab National Bank Officer Employee' (Discipline and Appeal) Regulations, 1977 referred to in the Punjab National Bank case is para-materia to the Rule 50(3)(ii) of State Bank of India (Supervising Staff) Service Rules governing the facts of the present case with which we are concerned. The contentions advanced by the learned senior counsel for the appellant before us are almost similar to the contentions advanced in the case of Punjab National Bank aforementioned. In the case of Punjab National Bank also similar contentions were urged that the Punjab National Bank officer Employees' (Discipline and Appeal) Regulations, 1977 did not require that an opportunity of being heard be given to the delinquent officers when the disciplinary authority disagreed with the finding of the enquiring authority; once the enquiring authority had given hearing to them and if the decision was before Ramzan Khan's case, the disciplinary authority was not required to give the copy of the enquiry report to the delinquent officer. In that view, it was not necessary to give a hearing to the case where disciplinary authority differs from the enquiry report. A Bench of learned three Judges in the said case has specifically noticed in paragraph II as to the controversy that was required to be resolved in that case. The controversy in that case also related to the case where the disciplinary authority disagreed with the findings of the enquiring authority and Regulation 7(2) does not expressly state that when the disciplinary authority disagrees with the finding of the enquiring authority an opportunity is to be given. After referring to various decisions including the decisions relied on behalf of the Bank, this Court has clearly held that where the disciplinary authority disagrees with the report of the enquiring authority in regard to certain charges, providing of an opportunity is necessary to satisfy the principle of natural justice. Paragraph 19 of the said judgment reads thus:

"The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principle of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

In paragraph 20 thereof, this Court agreeing with the case of Institute of Chartered Accountants of India v. L.K. Ratna, [1986] 4 SCC 537 and Ram Kishan v. Union of India, [1995] 6 SCC 157, specifically stated that the view taken in State Bank of India v. S.S. Koshal, [1994] Supp. 2 SCC 468 and State of Rajasthan v. M.C. Saxena, [1998] 3 SCC 385, did not lay down the correct law. In our view, the controversy that is to be resolved in the present case arose for consideration in the said Punjab National Bank case directly. The said judgement in all force applies to the facts of the present case. The distinction sought to be made on behalf of the appellants taking support from the Constitution Bench judgment of this Court in Mohapatra 's case (supra) does not help them for two

reasons: firstly, that was not a case where the controversy that has arisen in this case dealing with specific regulation was directly dealt with. As already stated above, in the case of Punjab National Bank a three Judge Bench of this Court has directly considered the effect of said Regulation, particularly and directly in regard to providing of an opportunity to be read into the Regulation. Secondly, on the facts of the case before the Constitution Bench, this Court found that the direction given by the High Court to reconsider as to the punishment imposed in that case was not correct. The argument that in the case arising prior to Ramzan Khan's case not giving an opportunity by the disciplinary authority, would not vitiate the order of dismissal, also does not support the case of the appellants in the light of the fact that in the case of Punjab National Bank also the proceedings related to the period prior to Ramzan Khan case.

It was also contended on behalf of the appellants that the High Court committed an error in setting aside the order of dismissal when it was not shown that any prejudice was caused to the respondent by not giving an opportunity to him by the disciplinary authority. In this regard the learned counsel cited a decision of this Court in *Union Bank of India v. Vishwa Mohan*, [1998] 4 SCC 310. As already noticed above, before the High Court both the parties concentrated only on one point, namely, the effect of not providing an opportunity by the disciplinary authority when the disciplinary authority disagreed with some findings of the enquiry officer. It was also not shown by the appellants before the High Court that no prejudice was caused to the respondent in the absence of providing any opportunity by the disciplinary authority. The aforementioned case of *Vishwa Mohan* is of no help to the appellants. The learned counsel invited our attention to para 9 of the said judgment. As is evident from the said paragraph this Court having regard to the facts of that case, taking note of the various acts of serious misconduct, found that no prejudice was caused to the delinquent officer. In para 19 of the judgment in *Punjab National Bank* case, extracted above, when it is clearly stated that the principles of natural justice have to be read into Regulation 7(2) (Rule 50(3)(ii) of State Bank of India (Supervising Staff) Service Rules, is identical in terms applicable to the present case) and the delinquent officer will have to be given an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the Enquiry Officer, we find it difficult to accept the contention advanced on behalf of the appellants that unless it is shown that some prejudice was caused to the respondent, the order of dismissal could not be set aside by the High Court.

Therefore, we are in respectful agreement with the decision of this Court in *Punjab National Bank's* case, being directly on the point. Moreover, in this case the High Court has given liberty to the appellants to proceed the case in accordance with law. Under these circumstances and in view of liberty given, as stated above, we do not find any good reason to upset the impugned order. Consequently, the same is affirmed and the appeal is dismissed with no order as to costs.