Supreme Court of India
Union Bank Of India vs Vishwa Mohan on 7 April, 1998
Author: J S.P. Kurdukar
Bench: Sujata V. Manohar, S.P. Kurdukar, D.P. Wadhwa

PETITIONER:
UNION BANK OF INDIA

Vs.

RESPONDENT:
VISHWA MOHAN

DATE OF JUDGMENT: 07/04/1998

BENCH:
SUJATA V. MANOHAR, S.P. KURDUKAR, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T S.P. KURDUKAR,J The first appellant is a nationalized bank incorporated under the Banking companies (Acquisition and Transfer of undertakings) Act, 1970, (for short `the Act'). The service conditions of its officers/employees are governed by Regulations framed under the powers delegated under Section 19 of the Act. The disciplinary proceedings for various acts of branch by its officers/employees are regulated by Union Bank of India Officers Employees (Discipline and Appeal) Regulations, 1976, (for short ` the Regulations')

2. The respondent was initially recruited in the service of the Bank as a Clerk. Incidentally, it may be stated that in 1974, an inquiry was conducted in regard to certain acts of misconduct and irregularities committed by him and upon such findings by the Inquiry Officer, he was dismissed from service, but, however, on his representations, he was reinstated on humanitarian grounds in 1982 pursuant to the order passed by the Managing Director.

3. On reinstatement, the respondent came within the zone of consideration for promotion. He accordingly participated in the promotion process held in 1982-83 and was empanelled in 1984 for promotion. He came to be promoted as an officer in the year 1988 on his turn in the panel. Sometime in 1989, certain irregularities committed by him prior to the promotion and thereafter came to the notice of the bank authorities and thereafter he came to be suspended under the

Regulations and was paid only the subsistence allowance as admissible under the Regulations. The respondent filed Writ Petition No. 3789 of 1990 and it appears that the High Court by its order dated 9th February, 1990 stayed the operation of the orders passed by the bank authorities. We are told that the Writ Petition is still pending.

4. The Disciplinary Authority on being prima facie satisfied that the alleged misconduct of the respondent needs to be inquired into under the Regulations, instituted departmental inquiry. The four charge sheets dated 17th February 1989, 25th August 1989, 16th December 1989 and 13th February, 1990 came to be served on the respondent for his alleged acts of bribery, embezzlement, misappropriation and other acts of unbecoming of a bank officer. After service of the charge sheets and the statement of allegations in respect thereof, an Inquiry Officer came to be appointed. During the inquiry proceedings, the respondent attended on few dates and thereafter the inquiry proceeded ex parte. The Inquiry Authority after analysing the evidence led before it found the respondent guilty of charges which were levelled against him and accordingly submitted it's report dated 8th December, 1990 to the disciplinary Authority.

5. The Disciplinary Authority after considering the report by its order dated 7th January, 1991 warded the punishment of dismissal of the respondent from the service. This order was unsuccessfully challenged in the Writ Petition and the same was dismissed on 21st March, 1991 on the ground that the respondent had not availed the alternate remedy of appeal as provided under Regulation 17. the respondent thereafter preferred an appeal under Regulation 17 to the Appellate Authority which after considering it on merits dismissed the same vide it's order dated 30th may 1991. The respondent aggrieved b the orders passed by the Disciplinary Authority and the Appellate Authority filed a Civil Misc. Writ Petition No. 23286 of 1991 in the High Court.

6. The High Court after hearing the parties and on perusal of their pleadings vide its Judgment and order dated 30th April, 1996 allowed the writ petition nd set aside the orders dated 7th January, 1991 and 30th May, 1991 passed by the Disciplinary Authority and the Appellate Authority respectively and directed the Disciplinary Authority to serve a copy of the inquiry report on the respondent, who if so chooses, may file a representation against the inquiry report. The Disciplinary Authority thereafter will consider the report and the representation and will pass the order in accordance with law. The High Court further directed that the respondent be reinstated to the post which he held at the time of dismissal forthwith to enable the Disciplinary authority to conclude the inquiry afresh in the light of the observations made in the judgment. It is this order passed by the High Court which is the subject matter of challenge in this appeal.

7. We may briefly indicate the reasons which weighed with the High Court to set aside the order of dismissal dated 7th January, 1991 and 30th may, 1991 passed by the Disciplinary Authority and the Appellate Authority respectively. The High Court assumed that the copy of the inquiry report was never furnished to the respondent at any stage and therefore, the respondent was greatly prejudiced due to non receipt of the copy of the inquiry report. Factually, this is incorrect. It appears that the copy of the report was not furnished to the respondent until the Disciplinary Authority passed the order of dismissal on 7th January, 1991. But, however, the said copy appears to have been served on the respondent when he filed the statutory representation/appeal under the Regulations before the

Appellate Authority.

8. On perusal of appeal and the writ petition memos, it is quite clear that the respondent had challenged the inquiry report/findings on merits. In fact, he annexed the copy of the report/findings as Annexure XVI to the said petition. In paragraph 62, he had assailed the findings of the Inquiry Authority and sought to project that he is totally innocent and none of the charges could be sustained on the material produced before the Inquiry Authority. It is thus clear that the respondent did have an opportunity to assail the findings of the Inquiry Authority in the statutory appeal as well as in the writ petition. In the light of this factual position, the question that arises for our consideration is whether the High Court had correctly applied the ratio of the judgment of this Court in Managing Director, ECIL. Hyderabad and others Vs. B. Karunakar and others, 1993 (4) SCC 727. The High Court has reproduced para 31 of this judgment in extenso but while applying the ratio, in our considered view, it has committed an error. What weight with the High Court can be best summarised in its own words as under :-

> "Whereas the first charge-sheet relates to the period when he was a clerk in the bank, subsequent three charge sheets relate to the period when he was promoted to the cadre of officers. The contention of the his promotion to the cadre of officers means that he had satisfactory record before the date of promotion. It is submitted that the promotion implies a good and satisfactory past record. Unless the petitioner puts in satisfactory service in the past, it is contended that he will not be promoted to the care to care of officers and if that is so, no charge of the period when he was a clerk in the bank , could be made the basis of disciplinary proceedings by the respondents. It is contended that if the inquiry report had been served on the petitioner, then he would have highlighted this aspect in his representation to the Disciplinary Authority; and in that event the Disciplinary Authority would not have been influenced by the grave charges as stated in the first charge sheet."
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> While dealing with these contentions, the High Court observed:-
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> "It is not shown in what circumstances the charges under the first charge sheet have been considered . All these questions deserved to be considered. If the disciplinary authority comes to the conclusion that the charges stated in the first charge sheet, cannot be the basis of the proceedings, then the question would be whether the charges as stated in the subsequent three charge sheets warrant the same punishment which is awarded on the charges of all the four charge sheets." The High Court then went on to observe :-
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> "We have carefully gone through all the charges. In the first charge sheet relating to the period when the petitioner was a clerk, charges of bribe, misuse of house loan and other serious financial irregularities have been stated which are stated by the disciplinary authority in his order. The charges of such serious nature are not stated in other charge sheets. It is, therefore, difficult to say as to what extent the disciplinary authority was authority was influenced by the charges which stand

> proved under the first charge sheet. The question for consideration is whether the disciplinary authority would have awarded the punishment of dismissal if the first charge sheet were not there, There is no material to indicate that the disciplinary authority would have reached the same conclusion in the matter of punishment even only the subsequent three charge sheets were there. On these facts, the submission of the petitioner that the is greatly prejudiced from non- supply of the copy of the inquiry report is not without force. The position would have been different had the disciplinary authority imposed the same punishment without taking into consideration the first charge sheet. On the facts and circumstances of the case, it is difficult to apply the principle of severeability, because the charges are so inextricably mixed up. We are, therefore, of the view that non-supply of the copy of the inquiry report as contended by the petitioner, seriously prejudiced him."

9. We are totally in disagreement with the above quoted reasoning of the High Court. The distinction sought to be drawn by the High Court that the first charge sheet served on the respondent related to the period when he was a clerk whereas other three charge sheets related to the period when he was promoted as a bank officer. In the present case, we are required to see the findings of the Inquiry Authority, the order of the Disciplinary Authority as well as the order of the Appellate Authority since the High Court felt that the charges levelled against the respondent after he was promoted as an officer were not of serious nature. A bare look at these charges would unmistakably indicate that they relate to the misconduct of a serious nature. The High Court also committed an error when it assumed that when the respondent was promoted as a bank officer, he must be having a good report otherwise he would not have been promoted. This finding is totally unsustainable because the various acts of misconduct came to the knowledge of the bank in the year 1989 and thereafter the first charge sheet was issued on 17th February, 1989. The respondent was promoted as a bank officer some time in the year 1988. At that time, no such adverse material relating to the misconduct of the respondent was noticed by the bank on which his promotion could have been withheld. We are again unable to accept the reasoning of the High Court that in the facts and circumstances of the case "it is difficult to apply the principle of severability as the charges are so inextricably mixed up." If one reads the four charge sheets, they all relate to the serious misconduct which include taking bribe, failure to protect interest of banks, failure to perform duties with utmost devotion diligence, integrity and honesty, acting in a manner unbecoming of a bank officer etc. In our considered view, on the facts of this case, this principle has no application but assuming that it applies yet the High Court has erred in holding that the principle of severability cannot be applied in the present case. The finding in this behalf is unsustainable. As stated earlier, the appellant had in his possession the inquiry report/findings when he filed the statutory appeal as well as the writ petition in the High Court. The High Court was required to apply its judicial mind to all the circumstances and then form its opinion whether non-furnishing of the report would have made any difference to the result in the case and thereupon pass an appropriate order. In paragraph 13, this Court in Managing Director, ECIL, Hyderabad and others (supra) has very rightly cautioned:

> "The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts."

In our considered view, the High Court has failed to apply its judicial mind to the facts and circumstances of the present case and erroneously concluded that non supply of the inquiry report/findings has caused prejudice to the respondent.

10. Mrs. Rani Chhabra, Learned Counsel appearing for the respondent supported the view taken by the High Court and urged that the respondent was denied a reasonably opportunity as he was not allowed to avail the services of the legal expert and consequently the Inquiry Authority proceeded ex-parte. She further urged that the allegations of misconduct levelled against the respondent could not be said to be so serious which would warrant the punishment of dismissal.

11. After hearing the rival contentions, we are of the firm view that all the four charge sheets which were inquired into relate to serious misconduct. The respondent was unable to demonstrate before us how prejudice was caused to him due to non supply of the Inquiry Authority's report/findings in the present case. It needs to be emphasised that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this is not observed, the confidence of the public/depositors would be impaired. It is for this reason, we are of the opinion that the High Court had committed an error while setting aside the order of dismissal of the respondent on the ground of prejudice on account of non furnishing of the inquiry report/findings to him.

12. For the foregoing reasons, we allow the appeal, set aside the order dated 30, 1996 passed by the High Court in Civil Misc. Writ Petition No. 23286 of 1991 and confirm the order of dismissal dated 7th January, 1991 and 30th May, 1991 passed by the Disciplinary Authority and the Appellate Authority respectively. The respondent to pay the cost of the appellant.