Supreme Court of India
Oriental Bank Of Commerce & Ors vs S.S. Sheokand & Anr on 26 February, 1947
Author: H Gokhale
Bench: H.L. Gokhale, J. Chelameswar

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 3081 OF 2006

Oriental Bank of Commerce & Ors. … Appellant (s)

Versus

S.S. Sheokand & Anr. … Respondent (s)

J U D G E M E N T H.L. Gokhale J.

This Civil Appeal seeks to challenge the judgment and order dated 16.3.2004 rendered by a Division Bench of Punjab and Haryana High Court in Civil Writ Petition No.18847 of 2001, allowing the said Writ Petition filed by the respondent, a Senior Manager in the appellant-bank. That judgment and order quashed the disciplinary order passed by the appellant-bank reducing him in two stages in pay scale with cumulative effect and also directed that he be considered for further promotion. The facts leading to this appeal are this wise:-

2. The respondent at the relevant time was working as the Senior Manager in a branch of the appellant-bank at Narwana, Bahadurgarh. It was noticed by the bank that he had purchased third party cheques/drafts of huge amounts beyond the discretionary powers of lending. This was done without completing the pre-sanction formalities. The appellant-bank, therefore, served a show cause notice to the respondent on 26.2.1997 for committing these unauthorised acts. The respondent filed a detailed reply dated 12.4.1997. Therein the respondent admitted committing of the alleged acts. He, however, stated that this was done with the intention of increasing the profits of the bank. He also contended that the bank had not suffered any loss in these transactions.

3. The appellant-bank, thereafter, charge-sheeted the respondent on 1.12.1997 for two specific irregularities, they were as follows:-

> "Charge No.1 – Respondent had unauthorisedly purchased 3rd party cheques/drafts of huge amount aggregating to Rs.45.23 crores for a number of parties much beyond his discretionary powers of lending without completing pre-sanction formalities in violation of head office guidelines. Thus he violated Regulation 3(i) of Oriental Bank of Commerce Officer Employees (Conduct) Regulation, 1982.
>
> Charge No.2 – Respondent had released advance under the Prime Minister Rojgar Yojna, and unauthorisedly insisted such borrowers to provide collateral securities in the shape of immovable property and guarantee in violation of the above scheme."

4. The charge-sheet was followed by an inquiry. The inquiry officer gave a report dated 26.2.1999 which was forwarded by the respondent on 17.4.1999 to make a representation on the findings. In paragraph 4 of the report, the inquiry officer dealt with statement of SW-1 (State Witness No.1) which stated that as per the head office circular, the discretionary powers of the Branch Manager at the relevant time were up to Rs.30 lacs for purchasing bank drafts and government cheques, and up to Rs.1.5 lacs for third party cheques. As against this provision, the respondent had purchased cheques/drafts aggregating to Rs.45.23 crores as per the details produced in the inquiry report. This was done without any authorization, and particularly when the authority of the respondent in this behalf was placed under abeyance. The respondent raised various technical objections with respect to the production of the documents, but essentially contended that his acts, which went beyond discretionary powers, were ratified and confirmed by the higher authorities. He submitted that these instruments were received from the respectable parties to increase the profit of the branch. With respect to the instructions issued to him by the Regional Manager to stop purchasing these cheques and drafts, he submitted that he had not violated these instructions.

5. The paragraph 4.3 of the Enquiry report contains the assessment of evidence on charge No.1. It reads as follows:-

> "4.3 Assessment of Evidence:-
>
> Ex. S.27 and S.28 are head office circulars which lay down the discretionary powers of the branch incumbent. SW1 confirmed that during the material time the powers of the BM (Branch Manager) was 30 lacs for purchase of bank draft and Rs. 1.5 lacs for third party cheques. SW1 also confirmed that the CO(Charged Officer) had purchased cheques/drafts beyond his discretionary powers. He deposed that 77 cheques/drafts amounting to 40 crores and 153 cheques/drafts amounting to 14.63 crores were purchased through clearing adjustment account. It was confirmed that discounting of cheques/drafts through clearing adjustment account was not permitted as per HO guidelines. SW1 confirmed that Ex. S2 was HO (Head Office) Circular dated 11.12.95 which had placed in abeyance the discretionary powers of the BM and Regional Heads in respect of loans and advances except in the priority sector. SW1 confirmed that s-15 was HO circular dated 23.10.96 releasing the aforesaid restrictions. It is, therefore, evident that the powers of the BM and the Regional Heads had been kept in abeyance between 11.12.95 to 23.10.96. On examining Ex. S.3, S4 and S.17, SW1 confirmed that the CO had unauthorisedly purchased cheques/drafts during the period. Furthermore, SW1 confirmed that the cheques purchased through clearing adjustment account are that of sister and allied concerns. Ex. S.27 and 28 would evidence that this power was vested with the GM (General Manager) and higher officers only. SW1 also confirmed that since the parties in question were also enjoying certain credit facilities sanctioned by RO/HO (Regional Office/Head Office), the branch should not have purchased cheques/drafts of the parties under its own powers. Ex. S-6, S.7, S.8 and S.9 are correspondence which proved that the higher formation of the bank had raised serious objections to the CO's purchase of cheques/drafts. Ex. S.10 and S.12 are letters/replies of the CO where in he had

> admitted his mistakes. SW1 also confirmed that Ex.S.13 and S.14 are letters from the GM Personnel giving details of the unauthorised purchase of cheques and drafts by the CO, which were beyond his discretionary powers and made at a time when his powers were placed under abeyance. His non-reporting in the matter to RO has also been questioned. Ex. S14 is a letter from the CO accepting the aforesaid matter with an assurance to not to repeat the same in future. In view of the aforesaid evidence the contention of the CO to treat the matter as that of the priority sector is naturally not tenable. However, the CO has stated that there was no loss to the bank. The PO (Prosecuting Officer) has not disputed this. Therefore, the act of omission and commission of the CO can essentially be treated as procedural lapses. The charge of the lack of integrity has not been substantiated.

Charge-1 is held as partly proved." Thus, the inquiry officer had held that the acts of omission and commission on the part of the respondent were essentially in the nature of procedural lapses. He held that the charge of lack of integrity had not been substantiated. Thus, charge No.1 mentioned above was, partly proved.

6. As far as charge No.2 is concerned, it was alleged therein that the respondent had released advances under the Prime Minister Rojgar Yojna, and for that insisted on the borrowers to provide collateral securities/guarantees of third party. The inquiry officer, however, noted that the prosecution had not placed on record any single primary document of the collateral securities/guarantees of third party to prove that part. He, therefore, held that charge No.2 was not proved.

7. After receiving the inquiry report the respondent made his representation dated 4.5.1999, and pleaded that he deserved to be exonerated. The bank, thereafter, submitted all these papers to the Chief Vigilance Officer of the Bank to forward the same to the Chief Vigilance Commissioner (CVC). The respondent at that stage wrote to the appellant- bank on 28.6.1999 seeking this correspondence with the CVC. In that he stated as follows:-

> "Now, after giving representation dated 4.5.99 on the findings of inquiry officer dated 26.2.99, the stage has come where second stage advice has to be remitted to the CVC through Chief Vigilance Officer of Oriental Bank of Commerce and I also understand that the case has been remitted or the same is in the process of remitting to the Chief Vigilance Officer alongwith recommendations of action proposed for onward submission to the Chief Vigilance Commissioner (CVC). In the light of above facts, you are requested to kindly supply me the copies of all such recommendations meant for second stage advice and the advice so received or likely to be received from the CVC for my representation on these recommendations prior to the stage of final disposal under Regulation '7' of Discipline & Appeal Regulations, 1982 so that the interest of my defence is not jeopardized."

8. The appellant declined that request of furnishing the correspondence of papers exchanged with the CVC. The Chief Vigilance Officer thereafter sent a letter to the disciplinary authority that the

Central Vigilance Commission had advised to impose a major penalty of reduction of two stages in pay scale, and thereupon the order came to be passed on 27.10.1999 imposing the punishment of reduction of two stages in pay scale. The respondent filed a departmental appeal, and the appeal came to be rejected. The review thereof was also rejected by the Board of Directors. The appellate order dated 26.5.2000 passed by the General Manager (Personnel) who was the disciplinary authority at the end of it stated as follows:-

> ".....In this connection it is submitted that awarding of punishment with cumulative effect falls within Regulation 4(f) and the Disciplinary Authority has independently applied its mind while awarding the punishment. It is further submitted that the advice of the CVC is not binding on the Disciplinary Authority. Since the CVC is rendering advice to the Disciplinary authority the correspondence exchanged is not required to be provided to the charge sheeted employee. The punishment has been awarded keeping in view the gravity of the misconduct committed by the officer employee alongwith the submissions made by the employee.
>
> Submitted for orders please.

SD/- General Manager (Per.) Disciplinary Authority." The Chairman & Managing Director, who was the appellate authority, passed his orders into following words:-

> "I don't wish to entertain" Sd/-
>
> 2.6.2000"

9. Being aggrieved by the imposition of this punishment, the respondent filed one Writ Petition earlier bearing No.4116 of 2001 to the Punjab and Haryana High Court on which an order came to be passed that the reviewing authority may consider the review application of the respondent. Time to take the decision was also extended on one occasion, and the High Court was informed that the Bank was considering commutation of the major penalty. The Chief Vigilance Officer of the bank wrote to the Chief Vigilance Commission on 18.8.2001 that the penalty imposed deserved to be modified to a minor penalty. It, however, appears that the request was not accepted and, the appellant-bank informed the respondent that the review petition was rejected. This led the respondent to file Civil Writ Petition No.18847 of 2001. Apart from the prayer to quash the order of punishment, the respondent also sought a direction that he be considered for further promotion from the post which he was then holding viz. that of MMGS-III to SMGS-VI. It was his contention that his turn had come up for consideration for promotion, and it was declined because of this departmental action. The High Court allowed the Writ Petition by the impugned judgment and order.

10. The High Court essentially relied upon the judgment and order rendered by this Court in the case of Nagaraj Shivarao Karjagi vs. Syndicate Bank Head Office, Manipal reported in AIR 1991 SC 1507. In that matter also the bank had acted as per the advice of the Central Vigilance Commission. The punishment was interfered by this Court. In paragraph 19 of its judgment, this Court observed

as follows:-

> "19.....The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer. (See. De Smith's Judicial Review of Administrative Action, Fourth Edition, p. 309). The impugned directive of the Ministry of Finance is, therefore, wholly without jurisdiction and plainly contrary to the statutory Regulations governing disciplinary matters."

11. The High Court relied upon another judgment of this Court in the case of State Bank of India vs. D.C. Aggarwal reported in AIR 1993 SC 1197. In that matter also, the High Court had quashed the punishment imposed on the respondent, since the CVC report had not been furnished to him. In paragraph 5 of the judgment this Court observed as follows:-

> "5..... May be that the Disciplinary Authority has recorded its own findings and it may be coincidental that reasoning and basis of returning the finding of guilt are same as in the CVC report but it being a material obtained behind back of the respondent without his knowledge or supplying of any copy to him the High Court in our opinion did not commit any error in quashing the order."

12. Therefore, in the present case, the High Court set aside the punishment imposed on the respondent. It also issued a Mandamus to the appellant-bank to consider the respondent for promotion, which he had sought. Being aggrieved by that judgment and order, this appeal has been filed. Mr. K.N. Bhatt, learned senior counsel appeared for the appellants and Mr. Nidhesh Gupta, learned senior counsel appeared for the respondent. Submissions on behalf of the parties:-

13. It was submitted on behalf of the appellants that the High Court had erred in interfering with the punishment, and in any case, directing consideration of the respondent for promotion. Mr. Bhatt, learned senior counsel for the appellant submitted that the bank was required to refer the matter to the CVC which is constituted under the Central Vigilance Commission Act, 2003. Regulation 19 of 1982 Regulations framed thereunder makes it obligatory whenever there is a vigilance angle involved. This regulation reads as follows:-

> "19. Consultation with the Central Vigilance Commission: The Bank shall consult the Central Vigilance Commission wherever necessary, in respect of all disciplinary cases having a vigilance angle."

> 14. That apart, he submitted that the bank had arrived at its decision on its own, and not because of any dictate by the CVC. Charge No.1 was a serious charge. It was

already proved in the Departmental Enquiry, and although it is true that at some stage the bank management thought that a lenient view may be taken, it specifically arrived at its own decision as can be seen from the appellate order. In his submission, there was no prejudice caused to the respondent by not making the report of the CVC available to him. Conduct of this type required a stringent action to be taken. He relied upon the judgment of this Court in the case of Disciplinary Authority-Cum-Regional Manager vs. Nikunja Bihari Patnaik reported in 1996 (9) SCC 69. This Court has held in that matter that when the bank officer acts beyond his authority, it is a misconduct, and a proof of any loss to the bank is not necessary. That was a case where also a senior officer of the Central Bank of India had allowed over-drafts and passed cheques involving substantial amounts beyond his authority, and the respondent had been dismissed from his service. Mr. Bhatt, submitted that in the instant case, the appellant-bank had, in fact, been lenient in imposing the punishment of merely reducing the respondent by two grades.

15. It was then submitted by Mr. Bhatt, that in any case the direction to consider the respondent for the promotion could not be sustained. He pointed out to us that the respondent had been punished earlier for similar conduct on 27.10.1999. He was considered for promotion in the year 2002, and subsequent to the impugned judgment in the year 2005 also but was not found fit. The learned counsel for the appellant-bank submitted that the question of promotion to such a senior post had to be decided on merits and suitability of the candidate. Mr. Bhatt, further submitted that even if the punishment was to be interfered with, there was no case for direction for promotion.

16. It was submitted on behalf of the respondent on the other hand, that there was no loss suffered by the bank, and at the highest it was a technical lapse. The bank management had also decided that a minor punishment was required, and it was only because of the dictate of the CVC that the disputed punishment had been imposed. Firstly, there was mo reason to refer the issue to the CVC since there was no vigilance angle involved therein. That apart, the report of CVC was not made available to the respondent, and it clearly amounted to denial of fair opportunity to defend. Mr. Gupta submitted that the denial of promotion was essentially because of this punishment, or else the respondent would have been promoted. He, therefore, submitted that there was no occasion to interfere with the impugned judgment and order. Mr. Gupta submitted that the two judgments relied upon by the High Court in the case of Nagaraj Shivarao (supra) and State Bank of India (supra) squarely applied to the present case, and there was no occasion for this Court to take a different view or to interfere with any part of the judgment.

Consideration of the submissions:-

17. We have considered the submissions of both the counsel. When we come to the question of imposition of punishment on the respondent, what we find is that undoubtedly, there was a serious allegation against him, and as it has been held in the case of Disciplinary Authority-Cum-Regional Manager (supra), such acts could not be condoned. At the same time, we have also to note that the bank management itself had taken the view in the initial stage that the action did not require a major penalty. It is also relevant to note that the High Court was also informed at the stage of review

that the Bank was considering imposition of a minor penalty. It is quite possible to say that the bank management did arrive at its decision to maintain a major penalty at a later stage on its own, and not because of the dictate of the CVC, but at the same time it has got to be noted that the CVC report had been sought by the management of the bank, and thereafter the punishment had been imposed. As observed in the case of State Bank of India (supra), may be that the Disciplinary Authority had recorded its own findings, and had arrived at its own decision, but when this advise from CVC was sought, it could not be said that this additional material was not a part of the decision making process. When this report was not made available to the respondent, it is difficult to rule out the apprehension about the decision having been taken under pressure. Any material, which goes into the decision making process against an employee, cannot be denied to him. In view of the judgment in the case of Disciplinary Authority-cum- Regional Manager (supra), the decision of the Bank could have been approved on merits, however, the two judgments in the cases of Nagaraj Shivaraj Karajgi (supra) and State Bank of India (supra) lay down the requisite procedure in such matters, and in the facts of this case, it will not be appropriate to depart from the dicta therein. On this yardstick alone, a part of the judgment of the High Court interfering with the punishment will have to be sustained.

18. Then, we come to the issue of direction of the High Court to consider the respondent for promotion. The respondent was already in a post of a Senior Manager. He was seeking a promotion to a still higher position. Promotion as such, and in any case, to a higher post cannot be insisted as a matter of right. In the instant case, it has been brought to our notice that the respondent was considered for promotion in 2002 and was not found fit. It was pointed out by Mr. Bhatt that this was not merely on the basis of the punishment that was imposed on the respondent. He had previous adverse entry also in his record in the year 1999. Besides, even if we look to the charge independently, purchasing third party cheques and drafts of huge amounts beyond his authority of lending has been held to be proved against the respondent, and that finding has not been seriously contested and dislodged. Whether he deserved a major punishment or not, or whether a lenient view of the allegations should be taken by considering his conduct as a procedural lapse is another aspect. In the instant case, the decision to impose a major punishment had to be interfered with because of the manner in which the decision was taken. It has also been submitted that the High Court should have referred the matter back to the appropriate authority for reconsideration and imposition atleast of a minor penalty. It is apparent that it was not a case for complete exoneration, however, it will not be desirable to give such direction after so many years, particularly, when the respondent has since retired. That being so, the order quashing the punishment will remain. That, however, would not mean that the direction of the High Court to the appellant to consider the respondent for promotion should be sustained.

19. We have also been informed that the respondent was considered for promotion once again in the year 2005, and not found fit for the promotion. Thus, the bank had considered the respondent after the impugned judgment which was in favour of the respondent. We are not concerned as such with this subsequent consideration, but this is only to point out that the bank had not declined to consider him. We are of course concerned with the direction in the impugned judgment to consider him once again, on the basis of the material prior to the judgment. Inasmuch as the record of the respondent was not satisfactory, in our view, there was no occasion for the High Court to give any such direction on the footing that the respondent was denied the consideration only because he had

suffered a punishment. That inference was not called for.

20. In the circumstances, we allow this appeal only in part. Whereas the judgment and order of the High Court setting aside the punishment will remain, the direction to consider him for promotion, and give him benefits on that footing will have to be set aside, which we hereby direct. The respondent will however get the monetary benefits on the footing that the said punishment is quashed.

21. Appeal is, therefore, allowed in part as above. Parties will bear their own costs.

.....J.

[H.L. Gokhale] .....J.

[J. Chelameswar] New Delhi Dated : February 26, 2014
