

CASE NO.:
Special Leave Petition (civil) 7221 of 2001

PETITIONER:
Debotosh Pal Choudhury

RESPONDENT:
Punjab National Bank & Ors.

DATE OF JUDGMENT: 17/09/2002

BENCH:
S. RAJENDRA BABU & P. VENKATARAMA REDDI.

JUDGMENT:

J U D G M E N T

RAJENDRA BABU, J. :

The petitioner before us was employed on the establishment of the first respondent-Bank. He was dismissed from service by an order made on October 8, 1988 on the basis of an enquiry conducted by an Enquiry Officer and the report made on September 26, 1988. In challenging by way of a writ petition the order of dismissal the petitioner contended that the enquiry is vitiated as he did not have any reasonable opportunity to have the copies of the documents or inspection thereof; that he was not afforded an opportunity to adduce oral evidence by examining two witnesses - Shri S.C. Tandon and Shri A.K. Dey; that under Regulation 6(18) of the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977 [hereinafter referred to as 'the Regulations'] 15 days time should have been given to him for furnishing a written brief after completion of the production of evidence, but the Enquiry Officer gave him only two days time; that the copy of the enquiry report was not given to him before imposing the punishment of dismissal.

The stand of the respondents is that full opportunity was given to the petitioner by either furnishing copies of documents or inspection thereof; that the production of oral evidence through Shri S.C. Tandon and Shri A.K. Dey was denied as such request was made at a belated stage and their evidence would be irrelevant to the enquiry; that the petitioner having been dismissed by an order made on October 8, 1988 before the decision of this Court Union of India vs. Mohd. Ramzan Khan, 1991 (1) SCC 588, non-furnishing of a copy of the enquiry report would not affect the order of dismissal; that the petitioner having made oral submissions pleaded for grant of time to file written brief only in case the Presenting Officer also did so; that when the Presenting Officer did not file any written brief, question of petitioner filing the same would not arise; that even otherwise, the petitioner did not ask for more time than granted and hence, cannot make a grievance of the same.

The learned Single Judge, inter alia, held that the disciplinary authority did not forward to the Inquiring Authority the documents and lists of witnesses before commencing the enquiry against the petitioner and accepted each one of the contentions raised by the petitioner and allowed the writ petition. On appeal, the Division Bench reversed the decision of the learned Single Judge and dismissed the writ petition. Hence, this appeal by special leave.

Regulation 6(5) of the Regulations which requires the disciplinary authority shall, where it is not the inquiring authority, forward to the Inquiry Authority the following documents:-

1. A copy of the articles of charge and statement of imputations of misconduct or misbehaviour;
2. A copy of the written statement of defence, if any, submitted by the officer employee;
3. A list of documents by which and list of witnesses by whom the articles of charge are proposed to be substantiated;
4. A copy of the statement of the witnesses, if any;
5. Evidence proving the delivery of the articles of charge under sub-regulation (3); and
6. A copy of the order appointing the 'Presenting officer' in terms of sub-regulation (6).

Fulfilment of some of the requirements of this Regulation is purely procedural in character. Unless in a given situation, the aggrieved party can make out a case of prejudice or injustice, mere infraction of this Regulation will not vitiate the entire enquiry.

The petitioner had been given documents for inspection as per the list given by the Presenting Officer and he made a statement on 18.7.1988 that he had verified all the documents and papers and inspected the documents as per the list given in the letter dated 24.5.1988. The Inquiring Authority allowed the petitioner to file a list of documents and as sought for by his letter dated 24.5.1988, the request for inspection or copies was also allowed. It is thereafter the Enquiry Officer has relied upon the documents produced by the Presenting Officer and adverted to various documents produced by the petitioner as well. Therefore, the contention of the petitioner that he did not have reasonable opportunity to inspect the documents is incorrect.

We have examined the records of the case with reference to various stages of the proceedings before the Inquiring Authority only to satisfy ourselves that the petitioner had been afforded a reasonable opportunity to put forward his case. If in the event that he wanted to place reliance upon the evidence of two witnesses Shri S.C. Tandon and Shri A.K. Dey, he would have put forth this contention at the forefront of his defence that he had acted on the verbal instructions of these officers and not on his own, but no such defence appears to have been taken by him. After the Bank's evidence was closed, the Enquiry Officer asked the petitioner to place his defence when he sought to examine the two witnesses Shri S.C. Tandon and Shri A.K. Dey and rather belatedly such a stand was taken by the petitioner as a pure afterthought. The claim of the petitioner is that he had permitted withdrawals to the borrowers beyond his vested powers and/or in those accounts where the sanction already stood lapsed on the verbal instructions given to him by Shri S.C. Tandon and Shri A.K. Dey. It is, therefore, very difficult to conceive of a position as to whether Shri S.C. Tandon and Shri A.K. Dey would be in a position to recall as to what transpired during the time when the petitioner was the Manager of the Bank at Burrabazar Branch and whether any conclusion could be based upon verbal instructions of the said officers. It is in those circumstances the Inquiring Authority rejected the permission for examination of these two witnesses as the same would not only be irrelevant but amount to adopting dilatory tactics in delaying their proceedings. Therefore, in the circumstances of the case, the rejection of the request of the petitioner for adducing evidence of Shri S.C. Tandon and Shri A.K. Dey will not vitiate the enquiry. Further, whatever documents the petitioner sought for had been furnished to him and he had full opportunity to inspect the same.

So far as Regulation 6[18] of the Regulations is concerned, it provides that "the Inquiring Authority may, after the completion of the production of evidence, hear the Presenting Officer, if any appointed, and the officer/employee, or permit them to file written briefs of their respective cases within 15 days of the date of completion of the production of

evidence, if they so desire". On 22.9.1988 the petitioner while concluding his defence, stated that he did not intend to say anything further provided no written brief was filed by the Presenting Officer, which if done, should be brought to his notice to enable him to submit the counter statement, if necessary. The Enquiry Officer then gave two days time to the Presenting Officer as well as to the petitioner to file written briefs, if any. No written brief was filed by the Presenting Officer and hence the question of filing a written brief by the petitioner did not arise at all and thus there is no violation of Regulation 6[18]. However, the records disclose that a written brief was, in fact, filed by the petitioner within the time given by the Enquiry Officer. Having participated fully in the enquiry and on the sitting held on 22.9.1988 having confirmed that he did not intend to say anything further, it would not be appropriate for the petitioner to contend that he had not been given any reasonable opportunity to put forth his case.

It is true that the petitioner was not provided with a copy of the enquiry report by the disciplinary authority before imposition of the punishment of dismissal, but that circumstance has no bearing on the dismissal of the petitioner in view of the decisions of this Court in Ramzan Khan's case (supra) and Managing Director, ECIL, Hyderabad & Ors. v. B. Karunakar & Ors., 1993 (4) SCC 727. The said two decisions are to the effect that no order of punishment before the date of the decision in Ramzan Khan's case would be challengeable on the ground that there is failure to furnish inquiry report before imposing the punishment by the disciplinary authority. In the present case, the punishment had been imposed upon the petitioner by the disciplinary authority on October 8, 1988 long before the decision of this Court in Ramzan Khan's case on 20.11.1990. Therefore, we hardly find any merit in the grievance made by the petitioner.

The Division Bench of the High Court has rightly allowed the appeal filed by the respondent resulting in dismissal of the writ petition filed by the petitioner.

This matter, therefore, does not call for any interference and the special leave petition stands dismissed. No costs.