

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9391 OF 2014

(Arising out of S.L.P. (C) No. 20299 of 2012)

State Bank of India

...Appellant

versus

Boa Penji

...Respondent

J U D G M E N T

Madan B. Lokur, J.

1. Leave granted.
2. The question for our consideration is whether paragraph 23.7.2 of the Procedure for Taking Disciplinary Action: Award Staff of the State Bank of India relating to the change of an inquiry officer holding a departmental inquiry is mandatory or directory in nature. The said paragraph reads as follows:

“**23.7.2** E.O. should not be changed after the commencement of inquiry

Once the enquiry has commenced i.e. witness, etc., have been produced and examined, an Enquiry Officer should not be changed as it is desirable that an authority who hears the arguments should decide the case. Allegation of bias or prejudice, if any, received against the Enquiry Officer, based on facts and reasonable grounds, should be properly examined by the disciplinary authority and reasons for continuing the existing officer or changing him should be recorded.”

3. In our opinion, the first part of the said paragraph is enabling in nature and cannot be interpreted as being mandatory. The second part of the said paragraph requiring the recording of reasons is mandatory but in the facts of this case, the failure of the State Bank of India to record reasons is not fatal to the inquiry held against the respondent.

The Facts

4. Boa Penji (the respondent) was working as Deputy Head Cashier at Itanagar Branch (Arunachal Pradesh) of the State Bank of India (the Bank). A charge sheet was issued to him on 5th March, 2001 leveling several allegations. Penji denied the allegations and, therefore, a disciplinary enquiry was held against him. The Enquiry Officer submitted a report exonerating him of all the charges. However, by an order dated 17th October, 2003 his Disciplinary Authority set aside the findings of the Enquiry Officer and directed him to hold a *de novo* enquiry against Penji.

5. Feeling dissatisfied with the order passed by the Disciplinary Authority, Penji preferred a writ petition in the Gauhati High Court which was dismissed by a learned Single Judge on 3rd June, 2005. Thereafter, Penji preferred a writ appeal and a Division Bench of the Gauhati High Court by its judgment and order dated 26th April, 2007

partly allowed the appeal. It was directed that a further enquiry may be held in respect of allegations against Penji but the holding of a *de novo* enquiry was not appropriate.

6. During the pendency of the writ appeal, the Enquiry Officer Phuntsok Rinchin took voluntary retirement with effect from 31st January, 2007. Therefore, after the decision of the Division Bench on 26th April, 2007, the Bank had no option but to appoint another Enquiry Officer and, accordingly, Nidhir Ranjan Kar was appointed as the Enquiry Officer to conduct a further enquiry into the allegations against Penji.

7. Nidhir Ranjan Kar submitted his report to the Disciplinary Authority and after considering the representation made by Penji, the Disciplinary Authority passed an order removing Penji from the services of the Bank. A departmental appeal was preferred by Penji but it was rejected. This led him to prefer a writ petition in the Gauhati High Court being W.P. No. 256(AP) of 2010.

8. The writ petition filed by Penji was heard on merits but it was dismissed by a learned Single Judge by a judgment and order dated 11th March, 2011.

9. Feeling aggrieved, Penji preferred Writ Appeal No. 20 of 2011 which came to be allowed by the Division Bench of the Gauhati High

Court by the impugned judgment and order dated 7th March, 2012.

10. The only contention urged by Penji before the Division Bench was that in terms of paragraph 23.7.2 of the Procedure for Taking Disciplinary Action, the Enquiry Officer could not have been changed without the recording of reasons by the Bank. This contention was accepted. It may be recalled that the Enquiry Officer was Phuntsok Rinchin, but subsequently Nidhir Ranjan Kar was appointed as the Enquiry Officer. According to the High Court, this was not permissible without reasons being recorded for the change. Therefore, the High Court held that the enquiry report given by Nidhir Ranjan Kar, the order of removal passed against Penji and the rejection of his departmental were liable to be quashed and were in fact quashed and set aside. The High Court directed that Penji be reinstated with all consequential benefits including back wages. It is under these circumstances that the Bank is in appeal before us.

Discussion

11. A bare perusal of paragraph 23.7.2 of the Procedure for Taking Disciplinary Action makes it quite clear that once a departmental enquiry has commenced against an officer, it would be *desirable* if the Enquiry Officer is not changed. However, if there is a good reason for changing the Enquiry Officer, a change may be made but reasons for

doing so should be recorded.

12. The High Court rightly noted that no reasons were given by the Bank for changing the Enquiry Officer. Therefore, the change in the Enquiry Officer vitiated the inquiry against Penji. There is no doubt that the Bank ought to have given reasons for changing the Enquiry Officer that is, replacing Phuntsok Rinchin with Nidhir Ranjan Kar. However, on the facts of this case, it is quite obvious that Nidhir Ranjan Kar was appointed as the Enquiry Officer only because Phuntsok Rinchin had taken voluntary retirement and was no longer in the services of the Bank. It is nobody's case that an officer who has taken voluntary retirement can continue to function as the Enquiry Officer in a departmental enquiry even after he has severed his links with the Bank.

13. If the first part of paragraph 23.7.2 is read as being mandatory it may lead to strange results in some situations. For example, if the Enquiry Officer is permanently disabled and is unable to physically proceed with the departmental inquiry or expires while in service, would it mean that the proceedings against the delinquent officer would lapse? Surely this is not and cannot be the intention of paragraph 23.7.2.

14. On the contrary, the first part of the said paragraph postulates

the change of an Enquiry Officer provided reasons are given for doing so. It is clear that by no stretch of imagination can the first part of the said paragraph be read otherwise than as being directory in nature. No doubt, it is desirable that a departmental inquiry started by a particular Enquiry Officer should be concluded by him or her. But if there are reasons for changing the Enquiry Officer, there cannot be any bar in doing so.

15. Insofar as the present appeal is concerned, since Phuntsok Rinchin had taken voluntary retirement there was no option with the Bank but to appoint another Enquiry Officer in his place, which the Bank did, though without recording reasons.

16. There is no doubt that the Bank must record reasons for a change in the Enquiry Officer – and in this case, it did not do so. But, in the facts and circumstances of this case, in our opinion, the failure to record reasons would not be fatal to the inquiry nor would it be enough reason to vitiate the enquiry against Penji, unless some prejudice has been caused to him. However, nothing by way of prejudice to Penji has been shown either to the High Court or to us. Since no prejudice has been caused to Penji by the appointment of Nidhir Ranjan Kar as the fresh Enquiry Officer in place of Phuntsok Rinchin, we reject the view of the High Court that the inquiry against

Penji was vitiated. On the contrary, in terms of the order passed by the High Court in the first round of litigation, the Bank was required to appoint an Enquiry Officer to conduct a further inquiry against Penji. On the voluntary retirement of Phuntsok Rinchin another Enquiry Officer had necessarily to be appointed and that step was, accordingly, taken by the Bank. We see no basis for any complaint by Penji and there is also no allegation of any *mala fides* or bias or any other adverse consequence insofar as Penji is concerned in the appointment of a fresh Enquiry Officer.

Conclusion

17. In the circumstances, we set aside the judgment and order passed by the High Court and hold that the first part of paragraph 23.7.2 of the Procedure for Taking Disciplinary Action: Award Staff is not a mandatory provision. However, we emphasize the mandatory requirement of recording reasons by the Bank for changing an Enquiry Officer during the continuance of a departmental enquiry against an officer. In the facts of the present appeal, the appointment of a fresh Enquiry Officer was inevitable. The failure of the Bank to record reasons for changing the Enquiry Officer did not vitiate the inquiry against Penji.

18. Since the High Court did not go into the merits of the case but

allowed the writ appeal only on the submission that the Bank could not have changed the Enquiry Officer, while setting aside the impugned judgment and order we remand the matter back to the High Court for consideration of the issues raised by Penji on merits.

19. The appeal is allowed.

.....J
(**Madan B. Lokur**)

.....J
(**C. Nagappan**)

New Delhi;
October 10, 2014

ITEM NO.1A
(For judgment)

COURT NO.11

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 20299/2012

(Arising out of impugned final judgment and order dated 07/03/2012
in WA No. 20/2011 passed by the High Court Of Gauhati)

STATE BANK OF INDIA

Petitioner(s)

VERSUS

BOA PENJI

Respondent(s)

Date : 10/10/2014 This petition was called on for pronouncement
of judgment today.

For Petitioner(s) Mr. Anil Kumar Sangal, Adv.
Mr. Siddharth Sangal, Adv.

For Respondent(s) Mr. V.K. Bali, Sr. Adv.
Mr. A. Tewari, Adv.
Mr. Aditya Soni, Adv.
Ms. Eliza Bar, Adv.
Ms. Isha Jha, Adv.
Ms. Sunita Sharma, Adv.

Hon'ble Mr. Justice Madan B. Lokur pronounced the
non-reportable judgment of the Bench comprising His Lordship and
Hon'ble Mr. Justice C. Nagappan.

Leave granted.

The appeal is allowed in terms of the signed non-reportable
judgment.

(R.NATARAJAN)
Court Master

(JASWINDER KAUR)
Court Master

(Signed non-reportable judgment is placed on the file)