

CASE NO.:
Appeal (civil) 298 of 2005

PETITIONER:
Bank of India & Ors

RESPONDENT:
T. Jogram

DATE OF JUDGMENT: 02/08/2007

BENCH:
H.K. SEMA & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

(With C.A.No.640 of 2005)

H.K.SEMA, J.

(1) This appeal preferred by Bank of India is directed against the judgment and order dated 3.9.2004 passed by the Division Bench of the High Court of Judicature, Andhra Pradesh in Writ Appeal No.205 of 2002, upsetting the order passed by the learned Single Judge.

(2) We have heard Ms.Neha Sharma, learned counsel for the appellants as well as Mr. A.T. Rao, learned counsel for the respondent.

(3) Briefly stated the facts are as follows:-

The respondent was appointed as a clerk in the appellant-bank sometime in the year 1982. He was, thereafter, promoted as Junior Management Officer Scale-I in 1993 and was posted to Tamilnadu. After two years he was transferred to Hyderabad. While he was working as an officer at Secunderabad Branch during the period from 6.1.1996 to 30.3.1998, he was on deputation to Visakhapatnam from 22.02.1997 to 25.02.1997 for mobilization of shares. He submitted bills claiming travel expenses, lodging and boarding charges and halting allowance for the aforesaid period. It was found that the amount claimed by the respondent was inflated. A charge memo was issued to him on 26.03.1999. The charges levelled against him are:-

"Article I

"You were on deputation to Visakhapatnam Branch from 22.2.1997 to 25.2.1997 for which you submitted the TA bill on 27th February, 1997 claiming the fabricated travelling expenses, which are far in excess of the normal conveyance. You are claimed and submitted a lodging bill of Lodge Brindavan for Rs.500/- for two days whereas the room rent paid by you in the said lodge Brindavan for 2 days was Rs.104/-. Thus you submitted a false bill. You had also arranged to incorporate boarding charges of Rs.300/- in the bill issued by Lodge Brindavan although no boarding facilities are available in the said lodge. You have also claimed halting allowance of Rs.350/- which is in excess of the entitlement.

Your aforesaid acts of claiming false

and fabricated travelling expenses, claiming false lodging charges and also claiming excess halting allowance, if proved, shall amount to misconduct in terms of Regulation 24 of Bank of India Officer Employees (Conduct) Regulations, 1976 in as much as you alleged to have committed breach of Regulation 3(1) of the said Regulations, which reads as under:

Regulation 3 (1)

Every officer employee shall, at all times take all possible steps to ensure and protect the interest of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a Bank Officer.

CHIEF REGIONAL MANAGER
TRIVANDRUM REGION
AND
DISCIPLINARY AUTHORITY"

(4) The respondent submitted his explanation to the charge, denying the charges. The Disciplinary Authority appointed Chief Regional Manager, MICR Centre Hyderabad, as Enquiry Officer. The enquiry was conducted expeditiously. The Enquiry Officer after examining the witnesses and exhibited documents from both sides submitted his findings on 13.01.2000 holding the respondent guilty of the charges framed against him. A copy of the enquiry report was also furnished to the respondent and after examining the written reply by the respondent; the Disciplinary Authority accepted the findings of the Enquiry Officer and imposed the punishment of compulsory retirement from service w.e.f. 14.7.2001. Aggrieved thereby, he preferred Writ Petition No.14786 of 2001 questioning the impugned order of compulsory retirement. The said Writ Petition was disposed of by the High Court on 20.7.2001 directing the respondent to exhaust his alternative statutory remedy by filing an appeal under Regulation 17 of Bank of India Employees (Discipline and Appeal) Regulations, 1976. By an order dated 30.8.2001, the Appellate Authority dismissed the appeal of the respondent and confirmed the order of the Disciplinary Authority.

(5) Aggrieved thereby, the respondent preferred another Writ Petition No.18372 of 2001 questioning the penalty of compulsory retirement. The learned Single Judge after hearing counsel on both sides and perusing the record did not find any valid ground to interfere with the penalty of compulsory retirement and dismissed the Writ Petition by an order dated 27.9.2001.

(6) We may, at this stage quote the reasoning of the learned Single Judge while dismissing the Writ Petition. The learned Single Judge held:

"As long as the order passed is not in violation of rules/regulations/statutory provisions, the enquiry cannot be set aside in a casual manner. The Judicial review under Article 226 of the Constitution of India is open only on grounds of malafide, arbitrariness and perversity. The Writ Petitioner except stating that he is the founder of SCs, STs and OBCs Association protecting the interest of downtrodden and that the Respondent Bank

management is biased against him, has failed to place any relevant material to substantiate his case. The administrative and disciplinary action of the respondent bank cannot be the subject matter of review, once they followed the due process of law. In the present case, order of compulsory retirement has been passed based on the material available on record and on the charges levelled and proved against the petitioner and the order impugned has been passed in the public interest, retiring him compulsorily. The order impugned is subjective satisfaction of the respondent-Bank based on the report made available on record. The petitioner is an officer of the respondent-Bank and it goes without saying that the bank 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."

(7) We entirely agree with the reasons recorded by the learned Single Judge. The reasoning of the learned Single Judge is in consonance with the well-settled principles of law enunciated by this Court in a catena of decisions.

(8) We dismay to notice that the Division Bench of the High Court upset the well reasoning recorded by the learned Single Judge by re-appreciating the evidence.

(9) The Division Bench of the High Court also noticed that the High Court under Article 226 would not interfere with the findings recorded at the departmental enquiry by the Disciplinary Authority or the Enquiry Officer as a matter of course. The High Court also recorded that the Court cannot sit in appeal over those findings and assume the role of the Appellate Authority.

(10) Having said that, the High Court summersaulted and re-appreciated the entire evidence and then upset the well reasoning recorded by the learned Single Judge.

(11) Ms.Neha Sharma, learned counsel appearing for the appellant-bank would contend that there is no allegation of procedural irregularities or illegality or violation of statutory rules prescribing the mode of enquiry, which would require the Division Bench of the High Court to upset the well reasoning recorded by the learned Single Judge by way of judicial review. She would further contend that the High Court was wrong in re-appreciating the entire evidence and that the High Court cannot sit in appeal over the findings recorded by the Enquiry Officer and assume the role of the Appellate Authority. There is sufficient force in this contention. In support of her contention she referred to various decisions of this Court; Union Bank of India vs. Vishwa Mohan, (1998) 4 SCC 310, Apparel Export Promotion Council Vs. A.K. Chopra, (1999) 1 SCC 759, Union of India vs. K.G. Soni, (2006) 6 SCC 794, Sterling Computers Ltd. Vs. M/s M & N Publications Ltd., (1993) 1 SCC 445, State Bank of Patiala & Ors. vs. S.K. Sharma (1996) 3 SCC 364, Delhi Development Authority Vs. UEE Electricals Engg.(P) Ltd., (2004) 11 SCC 213, Chairman and Managing Director, United Commercial Bank Vs. P.C. Kakkar, (2003) 4 SCC 364.

(12) Avoiding multiplicity we may note a few decisions of this Court.

(13) In B.C. Chaturvedi Vs. Union of India, (1995) 6

SCC 749, a three Judge Bench of this Court held in paragraph 12 as under:-

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held that the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

(14) In the case of Regional Manager, U.P.SRTC, Vs. Hoti Lal, (2003) 3 SCC 605, this Court observed at p.614 scc as under:-

"If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of learned Single Judge upholding the order of dismissal."

(15) By now it is well-settled principle of law that judicial review is not against the decision. It is against the decision making process. In the instant case, there are no allegations of procedural irregularities/illegality and also there is no allegation of violation of principles of natural justice. Counsel for the respondent tried to sustain the allegation of malafide. He tried to assert that the respondent filed a case against the Chief Manager of Secunderabad Branch in 1996 and the enquiry initiated against the respondent is the fall out of malafide. We are unable to accept the bald allegations. The allegation of malafide was not substantiated. It is well settled law that the allegation of malafide cannot be based on surmises and conjectures. It should be based on factual matrix. Counsel also tried to assert the violation of principles of natural justice on the ground that the documents required by the respondent were not supplied to him. From the averment it is seen that the documents, which were sought to be required by the respondent, were all those bills submitted by the respondent himself before the authority. In these circumstances, no prejudice whatsoever was caused to the respondent.

(16) As already noticed the charge of the respondent was violation of Regulation 3(1) of Bank of India Officer Employees (Conduct) Regulations, 1976. The Regulation require that every officer employee shall at all times take all possible steps to ensure and protect the interest of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a Bank Officer.

(17) In the view that we have taken the impugned order of the Division Bench of the High Court is unsustainable in law. It is accordingly set-aside. The Order of the learned Single Judge is restored. The Writ Petition filed by the respondent shall stand dismissed. The appeal is allowed. No costs.

(18) CIVIL APPEAL NO. 640 OF 2005

In view of the order passed in Civil Appeal No.298 of 2005, Civil Appeal No.640 of 2005 is dismissed.