

PETITIONER:
THE WEST BENGAL STATE COOPERATIVEBANK LIMITED & OTHERS

Vs.

RESPONDENT:
PARITOSH BAGCHI & OTHERS

DATE OF JUDGMENT19/10/1995

BENCH:
VENKATASWAMI K. (J)
BENCH:
VENKATASWAMI K. (J)
VERMA, JAGDISH SARAN (J)

CITATION:
1995 SCC (6) 562 1995 SCALE (6)83

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

K. Venkataswami. J.

Leave granted. Heard Counsel on both sides. This appeal is preferred against the judgment and order dated 3.9.1993 passed in F.M.A.T. No. 1182 on the file of the High Court of Calcutta.

The first respondent was in the service of the appellant Bank. A charge-sheet was issued on 11.5.1981 against him calling upon the first respondent to show cause against the charges brought against him. On receipt of reply to the show cause notice a regular departmental enquiry was held and the Enquiry officer submitted a report. Thereafter the disciplinary authority accepting the enquiry report issued a further show cause notice dated 13.8.1981 why the punishment of dismissal should not be imposed upon him in the light of the enquiry report and findings thereon which were accepted by him. It must be noted that alongwith this notice, the copy of the enquiry report was also enclosed.

The first respondent challenged the issuance of second show cause notice itself by filling a writ petition. However, He withdrew the same as before the writ petition could be taken up for hearing, the final order dismissing the first respondent was passed by the Management.

The first respondent then challenged the order of dismissal by moving the High Court under Article 226 of the Constitution of India. A learned Single Judge of the High Court by order dated 12.6.1986 set aside the enquiry proceedings and consequently allowed the writ petition with liberty to proceed against the first respondent afresh according to law.

The appellants not satisfied with the order of the learned Single Judge preferred an appeal to the Division Bench in F.M.A.T. No. 1834/1986. The Division Bench by judgment and order dated 29.1.1987 modified the order of the learned Single Judge by upholding the disciplinary proceedings put to the state of issuance of second show cause

notice. The learned Judges observed as follows :-

"It would be open to the disciplinary authorities to proceed afresh and to decide whether a second show cause notice should be issued upon the writ petitioner against the penalty which may be proposed to be imposed. In case such show cause notice is issued, the writ petitioner would be at liberty to submit his explanation. Upon consideration of the relevant matters, the disciplinary authorities will pass orders in accordance with law."

Inasmuch as a copy of the enquiry report was available with the petitioner, the disciplinary authority after referring the above said Division Bench judgment called upon the first respondent to submit his explanation in writing within one month from the date of receipt thereof. In spite of the reminders given to the first respondent, he did not choose to give to the first respondent, he did not choose to give any explanation dealing with the findings rendered by the enquiry officer accepted by the disciplinary authority. On the other hand, the first respondent treated the show cause notices as not in conformity with the direction given by the Division Bench of the High Court while disposing of F.M.A.T. 1834 of 1986. After duly considering the representations, authority imposed a penalty of dismissal by order dated 7.3.1989.

The first respondent again challenged the order of dismissal by filing a writ petition and the learned Single Judge found that full opportunities were given to the first respondent to offer any explanation he wanted to offer and he was satisfied with the reasonable opportunity given to the first respondent in the light of the observations of the Division Bench referred to above. Consequently, he dismissed the writ petition. The first respondent aggrieved by the dismissal of the writ petition preferred F.M.A.T. No. 1182 of 1992.

The learned Judges after referring to the observations of the previous Division Bench held as follows :-

"There is nothing on record that the authority concerned had taken a decision pursuant to the liberty given by the earlier Division Bench with regard to whether second show cause notice requirement of giving show cause notice, if this is a part of the principles of natural justice cannot be curtailed or abridged by any order passed by the Court... As we are of the view that the order of punishment was passed without issuing any second show cause notice, the order of punishment dated 7th March, 1989 passed by the disciplinary authority cannot stand and accordingly, the order of the learned trial Judge is set aside."

The Division Bench, however, gave liberty to the appellants to proceed afresh only after giving the second show cause notice against the proposed punishment.

Learned counsel for the appellant after taking to through the paper book submitted that factually after disposal of the appeal by the Division Bench on Bench on earlier occasion, show cause notices were given to the first respondent and it is first respondent who failed to avail

the opportunities given to him. Therefore, according to learned counsel, the assumption of the learned Judges that there was no further show cause notice before the impugned punishment was imposed was not correct and therefore, the order is liable to be set aside.

Learned counsel appearing for the first respondent though initially denied that the first respondent was ever supplied with the report of the enquiry officer, subsequently admitted the supply of the report of the enquiry officer. However, he contended that the direction given by the Division Bench on the earlier occasion. We do not think that we can accept this contention of the learned counsel for the first respondent. We have seen factually the first respondent was supplied with the copy of the enquiry report. He was called upon to submit his explanation in the light of earlier Division Bench judgment. The first respondent instead of submitting his explanation found fault with the form of notice and raised contentions not relevant to the issue.

In the circumstances and on facts, we are satisfied that the first respondent was given reasonable opportunity before imposing the penalty of dismissal and the Division Bench was not justified in setting aside the order of dismissal on the sole ground that there was no second show cause notice issued before the impugned order was passed.

Though the question whether second show cause notice was at all necessary having regard to the dated of dismissal order and having regard to pronouncements of this Court's judgment in *Managing Director, ECIL, Hyderabad and others vs. B. Karunakar & Others* 1993 (4) SCC 727 was raised and argued, we do not propose to go into it in view of the fact that factually a second show cause notice was given and the first respondent was not diligent enough to avail the opportunity.

In the result, the appeal is allowed, the impugned judgment and order of the Division Bench dated 3.9. 1993 is set aside and that of the learned Single Judge is restored. However, there will be no order as to costs.