

CASE NO.:
Appeal (civil) 5811 of 1999

PETITIONER:
DEOKINANDAN SHARMA

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 11/04/2001

BENCH:
G.B. Pattanaik & B.N. Agrawal

JUDGMENT:

B.N.AGRawal, J.
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This appeal by special leave has been preferred challenging the order passed by a Division Bench of Delhi High Court in a Letters Patent Appeal whereby the same was dismissed upholding an order passed by learned single Judge of that Court confirming the order of removal of the appellant from the service of the bank after exhausting the internal remedies.

The short facts are that the appellant joined the service in the State Bank of India in its Khura Branch in the district of Bulandshahr (U.P.) as money tester on 26.5.1964 and was duly confirmed on the said post. Thereafter, he was promoted as officer grade-II and transferred to Agra in the year 1975 and later on in the year 1977 he was shifted to Faridabad branch of the bank and posted there as Officer-in-charge of the extension counter, Sewa Samiti, which counter was to handle transactions relating to deposit accounts, outward remittance and issues and encashment of rupees travellers cheques only with one man handling. On 13.10.1980 one Shri K.C. Batra, circle Auditor inspected the accounts of the said extension counter and found serious financial irregularities therein and reported the matter to Circle Vigilance Officer whereupon the appellant was suspended from the service of the bank when the departmental proceeding was under contemplation. Subsequently, on 21.1.1983 a chargesheet was issued against the appellant framing the following charges in the departmental proceedings :-

(i) That the petitioner purchased cheques from traders for substantial amounts without ascertaining genuineness of transactions in excess of Rs. 10,000/-

(ii) That the petitioner allowed overdrafts to various parties unauthorisedly in excess of Rs.10,000/-.

(iii) That the petitioner paid cheques/passed debits relating to certain accounts without positing them/striking balance in the ledger, thus concealing the overdrafts.

(iv) That the petitioner afforded credits to parties by debit to suspense account in anticipation of realisation of cheques in clearing of SCS. in excess of Rs.10,000/-.

(v) That the petitioner passed fictitious credits to parties and transferred funds from one account to another and reversed such entries subsequently with a view to conceal the overdrafts.

(vi) That the petitioner passed debits to various accounts without authority from the account holders in excess of Rs.10,000/-.

(vii) A shortage of Rs.100/- in cash balance was detected at the extension counter during a surprise verification on 13.10.1980.

It appears that different officers were appointed from time to time to conduct the departmental enquiry against the appellant but ultimately the enquiry commenced before Shri R.N. Dhingra, who informed the appellant of the time and place of enquiry to be conducted and before whom list of documents to be relied upon on behalf of the bank was produced by the Presenting Officer. In the meantime, it appears one Shri B.R. Sharma Officer MMG Scale-III was appointed as conducting officer who was later on replaced by one Shri Hardit Singh, Officer SMAGS-IV before whom on 5.10.1983 the Presenting Officer filed a list of witnesses to be examined on behalf of the bank. During the course of the enquiry on 19.10.1983, P.Ws.1 and 2 were examined and cross-examined. On 8.11.1983, which was the next date, P.Ws. 4 and 5 were examined by the Presenting Officer but were not cross-examined on that date on behalf of the defence. Thereafter, on 2.12.1983 P.W. 6 was examined and cross-examined. As P.Ws. 4 and 5 were not cross-examined, 28.12.1983 and 14.2.1984 were fixed as dates respectively for their cross-examination but they were not cross-examined on those two dates by the defence, ultimately these two witnesses could be cross-examined on 20.3.1984 on which date list of witnesses was also furnished for the first time by the defence for their examination and 11.4.1984 and 12.4.1984 were the dates fixed for their examination. On 11.4.1984 neither the defence representative attended the enquiry proceeding nor the appellant produced any defence witness, rather he filed petition for adjournment upon which the enquiry was adjourned to 12.4.1984. On 12.4.1984 certain documents were produced on behalf of the defence but neither the defence representative appeared nor a single witness was produced on behalf of the appellant and, therefore, the conducting officer decided to conclude the enquiry, which was initiated in the year 1981, and not to postpone the same further and submitted his report dated 22nd June, 1984. In his enquiry report the conducting officer, after detailed consideration, found that charge Nos. 2, 3, 5 and 7 were proved whereas charge no. 1 was partially proved and in relation to charge No.4 the conducting officer did not give any specific finding, but charge No.6 according to the conducting officer could not be proved. Upon receipt of the enquiry report, the Chief General Manager of the bank by an order dated 8.2.1985 passed the order of removal of the appellant from the

service of the bank acting under Rule 49 (g) of the State Bank of India Supervising Staff Service Rules after duly considering the entire matter. The appellant thereafter took up the matter in appeal and the Board of Directors of the bank considered the same in detail and confirmed the order of removal whereafter a review petition was filed before the reviewing committee which also after taking into consideration all the pros and cons of the matter did not find it expedient to interfere with the appellate order. The appellant then filed a writ application before the High Court which was dismissed by a learned single Judge after thoroughly considering the entire matter and the same has been affirmed in Letters Patent Appeal by Division Bench of the High Court which necessitated filing of a petition before this Court for grant of special leave to appeal in which leave having been granted, the present appeal is before us.

Mr. Prabha Shankar Mishra, learned senior counsel, appearing on behalf of the appellant in support of the appeal raised two points, firstly, it has been submitted that the conducting officer did not afford reasonable opportunity of hearing to the appellant to adduce defence evidence and secondly, that the appellate authority had committed error in disposing of the appeal without recording reasons and considering the submission made on behalf of the appellant. Dr. Rajeev Dhawan, learned senior counsel, appearing on behalf of the respondent-bank, on the other hand, submitted that the conducting officer had given reasonable opportunity to the delinquent during the course of the enquiry to adduce defence evidence and the appellate authority disposed of the statutory appeal by a detailed order after taking into consideration the entire matter. In support of the first submission, learned counsel appearing on behalf of the appellant, on being asked by us, produced copy of the petition of appeal filed before the statutory authority, from a bare perusal of which it would appear that there is no whisper of the aforesaid ground therein. Therefore, it is not possible to allow the appellant to raise this point before this Court. Even otherwise we do not find any substance on merit as from relevant portion of the order sheet of enquiry proceeding it would appear that the chargesheet was submitted upon the delinquent in January, 1983, on behalf of the bank list of documents to be relied upon by the bank was submitted in the months of May and September, 1983, list of witnesses was produced on behalf of the bank in the month of October, 1983, examination of witnesses on behalf of the bank started in that very month, the delinquent went on taking time for cross-examination of some of the witnesses examined on behalf of the bank who were ultimately cross-examined on 20.3.1984, only after examination of witnesses on behalf of the bank was completed, list of witnesses was filed by the defence for which the conducting officer fixed 11.4.1984 and 12.4.1984 as dates for their examination, on 11.4.1984 neither the defence representative appeared nor a single witness was produced on behalf of the defence, rather a prayer was made for time upon which the case was adjourned to next day i.e., 12.4.1984, on the adjourned date, i.e., 12.4.1984 also neither any defence representative appeared nor any witness was produced by the defence and the conducting officer, therefore, had no option but to submit his report as in spite of full opportunity afforded to the defence no witness was examined. In view of the aforesaid facts, we find no difficulty in holding that reasonable

opportunity was afforded to the appellant to adduce evidence during the course of enquiry. Thus the first point raised is devoid of any substance. While pressing the second submission, learned counsel appearing on behalf of the appellant strenuously placed reliance upon a decision of this Court in the case of Ram Chander vs. Union of India and Others [(1986) 3 SCC 103], in which, following earlier decision of this Court in Union of India vs. Tulsiram Patel, [(1985) 3 SCC 398], it was reiterated that appellate authority while deciding a statutory appeal is not only required to give a hearing to the government servant concerned but pass a reasoned order dealing with the contentions raised in the appeal. The learned counsel on behalf of the appellant has taken us to the appellate order from a bare perusal of which it would be clear that the Board of Directors of the bank while dismissing the appeal has taken into consideration all the points raised therein and dismissed the appeal after duly considering the entire matter. This being the position, we do not find any substance in this submission as well. No other point having been raised, we do not find any infirmity in the impugned@

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orders so as to be interfered with by this Court.@@
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 Accordingly, the appeal is dismissed but there shall be no
 order as to costs.