

CASE NO.:
Appeal (civil) 1641 of 2004

PETITIONER:
Canara Bank & Ors.

RESPONDENT:
Swapan Kumar Pani & Anr.

DATE OF JUDGMENT: 24/02/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
J U D G M E N T
WITH

CIVIL APPEAL NO. 1642 OF 2004

S.B. Sinha, J.

These are two cross appeals between the parties. Canara Bank is appellant in Civil Appeal No. 1641 of 2004 and respondent in Civil Appeal No. 1642 of 2004. Shri Swapan Kumar Pani (hereinafter referred to as "the first respondent") is appellant in Civil Appeal No. 1642 of 2004 and first respondent in Civil Appeal No. 1641 of 2004.

The first respondent at all material time was working as Accountant, in Jajpur Road, Orissa Branch of Canara Bank, Calcutta (hereinafter referred to as 'the Bank'). It is stated that in the said capacity he used to hold one set of keys of the locker of the bank. Another set of keys used to be in the custody of the Manager of the Bank. Admittedly on the ground that he had committed a misconduct; a departmental proceeding was proposed to be held in terms of Regulation 6 of the Canara Bank Officer Employees' (Discipline & Appeal) Regulations, 1976 (Regulations) wherefor the following Articles of Charge were served on the first respondent:

"M/s Utkal Iron & Steel Industries is a Constituent of our Jajpur road Branch. They were sanctioned an M.L. Limit of Rs. 10.00 lakhs vide advances Section \026I, C.O. Calcutta, letter CC: ADV-I:0069:84T dated 6.1.1984. the loan was sanctioned on Collateral Security of Bearer Bonds of Rs. 2.00 lacs besides other securities. The details of the bearer bonds are given in the statement of imputations.

The bearer bonds were put in a loan paper cover and kept in double lock on 20.1.1984.

On 23.1.1986, M/s S.K. Sahu & Brothers, the Statutory auditors, requisitioned the bonds for verification. It was found, on verification, that the bonds were missing and the cover contained a few blank sheets of B-2, attendance marking register.

There are reasons to believe that you had unauthorisedly and with ulterior motive removed the aforesaid bearer bonds from safe custody.

You have, thereby, failed to protect the interests of the Bank and have exposed the Bank to financial

loss.

By your above action, you have failed to perform your duties with utmost honesty, integrity, devotion and diligence and thereby committed a misconduct within the meaning of Regulation-3 (1) read with Regulation 24 of the Canara Bank Officer Employees (Conduct) Regulations, 1976, which is punishable under the provisions of Canara Bank Officer Employees' (Discipline Appeal) Regulations, 1976."

The gist of the charge contained in the said article of charge, thus, was that the first respondent had unauthorisedly and with ulterior motive removed the special bearer bonds worth Rs. 2 lacs from the bank's safe custody on 6.11.1985 on which date he was holding the second set of keys of the double lock having obtained the keys from the Manager's drawers and while removing the said bonds kept blank sheets of B-2 register therein. The said bearer bonds had been taken as collateral security from M/s Utkal Iron and Steel Industries towards sanctioning of M.L. Limit of Rs. 10 lacs.

In the departmental proceedings he was found to be not guilty of the said charges pursuant where to he was exonerated by an order of the Disciplinary Authority dated 29.3.1989. Again a charge-sheet containing almost identical charges was issued on 31.3.1989. The allegations made against the first respondent in the said charge sheet were that the said bearer bonds had been last seen by him in July, 1985 and thereafter he failed to verify the existence thereof. Though he was one of the holders of the keys the bank double lock and a certificate was issued by him as regards the existence of the said bearer bonds without actually verifying their availability he committed a misconduct. The charge against him in short was that he had failed to protect the bank's interest and exposed it to financial loss and that he had failed to discharge his official duties with devotion and diligence. Another departmental proceeding was initiated whereupon the Inquiry Officer submitted a report. It is, however, accepted that the said matter was not further proceeded against.

The Managing Director of the bank, who was the Reviewing Authority, allegedly came to know that the matter regarding missing of the bearer bonds had been investigated into by the CBI and from its report it was revealed that the same were removed by the respondent on 6.11.1985 and out of the 20 bonds, 5 were disposed of at Calcutta through a private person for a sum of Rs. 59,500/-. The Reviewing Authority, on the aforementioned premise, in purported exercise of his powers under Regulation 18 of the Regulations called upon the first respondent to show cause within 15 days as to why action should not be taken against him in the light of the fresh evidence; and as to why the Reviewing Authority should not set aside the findings of the Inquiring Authority dated 17.6.1988 and consequently the orders dated 29.03.1989 passed by the Disciplinary Authority should not be set aside. No show cause was filed by him. No explanation was submitted by him and consequently the Reviewing Authority passed an order dated 26.10.1995 setting aside the findings of the Inquiring Authority and consequent order dated 29th March, 1989. Pursuant to and in furtherance of the said order dated 26.10.1995 passed by the Managing Director of the appellant bank issued a fresh charge sheet on 31.01.1996 on the following terms :

"You are working as officer at our Rourkela branch since 20.6.1974.

Earlier you were working as accountant at our Jajpur Road, Orissa branch from 1.5.1985 to 3.5.1986.

M/s Utkal Iron & Steel Industries is a constituent of our Jajpur Road branch. They were sanctioned an ML limit of Rs. 10 lacs vide advances section I, circle office. Calcutta letter CC/ADV-1/0069/84T dated 6.1.1984. the loan was sanctioned on collateral security of Bearer bond of Rs. 2 lacs besides other securities. The details of the bearer bonds are given in the statement of imputation.

The bearer bonds were put in a loan paper cover and kept in double lock on 20.1.84.

On 23.1.86, M/s S.K. Sahu & Brothers the statutory auditors requisitioned the bonds for verification. It was found, on verification, that the bonds were missing and the cover contained a few blank sheets of B-2, attendance marking register.

Investigation has revealed that you had on 6.11.1985 removed the 20 special bearer bonds 1991 pledged by Shri R.K. Taparia, Managing Director of M/s. Utkal Iron & Steel Industries from the strong room and out of these bearer bonds get bearer bonds bearing Nos. A 160112. A 160136. A 160491 disposed of at Calcutta through a private person Sri Debipada Bhattacharya of Balasore town for Rs. 59,500/-."

The first respondent questioned the legality and validity of the said charge sheet by filing a writ petition in the High Court of Calcutta. A learned Single Judge of the said High Court refused to pass an order of stay. During pendency of the said writ petition disciplinary proceedings were held by the Inquiry Officer. A report was submitted finding him guilty of the charges; and pursuant thereto the disciplinary authority imposed a punishment of dismissal from service upon the first respondent by an order dated 4.12.1995. The said order, however, was not given effect to in view of the pendency of the writ petition.

The learned Single Judge dismissed the said writ petition by an order dated 12.4.2000. Aggrieved by and dissatisfied therewith the first respondent preferred a Letters Patent Appeal which has been allowed by a Division Bench of the said High Court by reason of the impugned judgment holding (1) The Managing Director of the Bank could not have taken recourse to Regulation 18, as no punishment had been imposed upon the first respondent. (2) In any event the power under Regulations 18 could have been exercised within a period of six months only and not thereafter. (3) Regulation 21 which empowers the bank to extend the time could not have been invoked in the fact of the case. (4) As the charge sheet was issued in terms of the said order of review, the same was liable to be quashed.

However, having regard to the seriousness of charges, the first respondent was denied the back wages. The bank was further given liberty to initiate fresh proceedings on proper materials, if any. Both the parties have, thus, filed appeals before us.

Mr. Ravindra Kumar, learned counsel appearing on behalf of the appellant bank assailing the judgment of the High Court would contend that in view of the fact that the third charge sheet was issued on new grounds, the Division Bench of the High Court committed a manifest error. In view of the fact that Regulation 21 of the Regulations, it was submitted, confers power upon the bank to enlarge the time for taking any action in terms thereof, the time for initiating the proceedings of review must be held to have been extended and, thus, it was not necessary to pass an order within a period of six months from the date of the first order, as has been held by the High

Court.

Mr. S. Murlidhar, learned counsel appearing on behalf of the first respondent, on the other hand, would urge that the Reviewing Authority was bound to exceed his jurisdiction under Regulation 18 of the Regulations while issuing the show cause notice dated 31.1.1996. In respect of the appeal preferred by the first respondent herein it was submitted that the High Court having found that the bank could not have initiated any disciplinary inquiry afresh, committed a patent illegality by granting liberty to the appellant to initiate fresh inquiry on fresh materials and denying back wages to the first respondent.

Regulations have been framed under Section 19 of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970. Regulations 18 and 21 read as under :

"18 \026 Review: Notwithstanding anything contained in these regulations, the Reviewing Authority may at any time within six months from the date of the final order, either on his own motion or otherwise review the said order, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come or has been brought to his notice and pass such orders thereon as it may deem fit:

Provided that:

(i) If any enhanced penalty, which the Reviewing Authority proposes to impose, is a major penalty specified in Clauses (f), (g), (h), (i) or (j) of Regulation 4 and an enquiry as provided under Regulation 6 has not already been held in the case, the Reviewing Authority shall direct that such an enquiry be held in accordance with the provisions of Regulation 6 and thereafter consider the record of the enquiry and pass such orders as it may be deem proper;

(ii) If the Reviewing Authority decides to enhance the punishment but an enquiry has already been held in accordance with the provisions of Regulation 6, the Reviewing Authority shall give show cause notice to the officer employee as to why the enhanced penalty should not be imposed upon him and shall pass an order after taking into account the representation, if any, submitted by the officer employee."

"21. Power to relax time-limit and to condone delay:

Save as otherwise expressly provided in these regulations the authority competent under these regulations to make any order may, for good and sufficient reasons or if sufficient cause is shown, extend the time specified in these regulations for anything required to be done under these regulations or condone any delay."

(Emphasis supplied)

The said Regulations have statutory force. An authority exercising such statutory power was required to act within the four corners thereof. He was bound by the limitations prescribed therein. Regulation 18 could have been applied in a case where the power of review is exercised in respect of a proceeding which has not attained finality. In this case, however, admittedly two charge sheets were issued and at least in one of them the first respondent was exonerated. The said order attained finality. The second one was not pursued despite a report having been submitted by the Inquiry Officer evidently because of the first disciplinary proceeding. As the first respondent was exonerated there was no question of enhancement of punishment and in that view of the matter second part of Regulation 18 had also no application. As no order had been passed extending the time, evidently the power under Regulation 21 had also not been exercised. We may notice that the first respondent was exonerated by an order dated 29.3.1989 whereas the purported order of review was passed on 25.7.1995, i.e. after a period of 6 years, which was much beyond the period of limitation. The power was also not exercised within a reasonable time.

Furthermore, the charges levelled against the first respondent herein are in 2 parts; (i) that he had on 6.11.1985 removed 20 special bearer bonds pledged by the Managing Director of M/s Utkal Iron & Steel Industries from the strong room of the bank; and (ii) out of those special bearer bonds five bearer bonds were disposed of at Calcutta for Rs. 59,500/-. Admittedly, the first part of the charge was covered by the first charge sheet dated 20.5.1987. He having been exonerated therefrom, no fresh charge sheet could have been issued in absence of any statutory power in this behalf. Only the second part of the said charge sheet, is said to be based on new materials purported to have been discovered by the Managing Director of the bank. An inquiry in the second part of the charge sheet could have been possible, if the first part thereof charge viz. the respondent had removed the said bonds pledged by M/s Utkal Iron & Steel Industries was not required to be proved. As the bank cannot be permitted to reopen the first part of the charge, it a fortiori cannot be allowed to enquire into the second part also as both the parts of the charge are interlinked with each other. In other words, proof of first part of the charge was wholly dependent upon the first part. The impugned judgment to that extent is unassailable.

The High Court, however, committed an error in granting liberty to the bank to initiate a fresh inquiry. If the High Court was of the opinion that the new materials purported to have been found were not sufficient for initiation of the enquiry in question, we fail to understand as to on what basis liberty was given to the bank to initiate a fresh inquiry, more so when the misconduct, if any, was committed as far back as in the year 1985.

We are, however, of the opinion that in the facts and circumstances of this case the discretion exercised by the High Court in refusing back wages to the first respondent herein need not be interfered with.

For the aforementioned reasons, the appeal filed by the appellant bank being Civil Appeal No. 1641 of 2004 is dismissed. The appeal filed by the first respondent being Civil Appeal No. 1642 of 2004 is allowed in part and to the extent mentioned hereinbefore. There shall be no order as to costs.