

Gopi Nath Kund Vs. Bank of India and ors.

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Court : Kolkata

Decided On : Feb-05-1980

Reported in : (1980)IILLJ332Cal

Judge : Chittatosh Mookerjee, J.

Appellant : Gopi Nath Kund

Respondent : Bank of India and ors.

Judgement

:

ORDER

Chittatosh Mookerjee, J.

1. The petitioner at the relevant time was employed as a clerk/cashier of the Bank of India, Bhubaneswar Branch. The Executive Regional Manager, Eastern Region, Bank of India by a memorandum dated 3rd January, 1976, inter alia, stated that it had been reported against him that on 25th November, 1975 within the bank hours he had indulged in shouting and abusing the Area Manager and an officer of the Bank; of India and the officers in general in fifthly, indecent and vulgar language, The Executive Regional Manager called upon the petitioner to explain within 7 days of the receipt of the said memorandum why disciplinary action should not be taken against him. The Executive Regional Manager, Eastern Region by the same order suspended the petitioner with immediate effect from the services of the Bank pending enquiry into the petitioner's aforesaid acts. The petitioner was to receive subsistence allowances according to the rules. On 21st January, 1976 the petitioner by a letter addressed to the Executive Regional Manager of the Bank denied the said allegations against him. He protested against his suspension.

2. Thereafter, on 29th of April, 1976 the petitioner obtained the present Rule. He has. Inter alia, prayed for a writ of mandamus commanding the respondents to recall and withdraw the aforesaid order dated 3rd January, 1976 and for commanding them to forbear from giving effect to the said order. The petitioner has also prayed for commanding the respondents to pay his usual salary and allowances from January, 1976 less the amounts already paid.

3. The respondents I to 5 have not filed any affidavit-in-opposition to the writ petition but they have craved leave to rely upon the affidavit in-opposition filed on their behalf at the interlocutory stage of this Rule. The said respondents had annexed to the said affidavit a copy of the charge-sheet dated 23rd April, 1976 issued by the Executive Regional Manager, Eastern Region against the petitioner in respect of the aforesaid alleged incident dated 25th November, 1975.

4. Mr. Chatterjee, learned advocate for the petitioner, in course of his submission, stated that the impugned suspension order of the petitioner had been since withdrawn. On 28th January, 1979 Mr. Chatterjee filed a true copy of the minutes of the meeting between the management and the representatives of the Bank of India Employees' Union, Calcutta held on Bombay on 14th of December, 1977. The second paragraph of the said minutes recorded that the union representative brought to the Chairman's notice their grievances especially in respect of Shri G.N. Kund, Shri A. Goswami, Shri J.J. Patnaik, Shri P.C. Dwary, and Shri Damodar Pagal. It was agreed that the management will review expeditiously the cases of the above-mentioned five employees. Pending this, the Management will lift the suspension of Shri G.N. Kund and Shri Damodar Pagal. The union agreed to withdraw the agitation and restore normalcy. Mr. Jhunjhunwalla, appearing on behalf of the respondents 1 to 5, filed a true copy of the letter of Area Manager, Bank of India, Bhubaneswar dated 6th December, 1977 informing the petitioner that it had been decided to lift the suspension on him and to allow him to report for duty at Bhubaneswar branch. The petitioner was requested to report for duty at Bhubaneswar branch as soon as possible. The petitioner would be entitled to full pay and allowance from the date he would resume his duties in terms of the head office instructions conveyed to him,

5. Thus, the impugned suspension order is no longer in force. Mr. Chatterjee, learned advocate for the petitioner, has submitted that this Rule is still maintainable inasmuch as the petitioner has been deprived of his full pay and allowances from the date of his suspension till he resumes his duties in terms of the aforesaid letter dated 6th December, 1977. In case, his suspension order is held to be null and void, the petitioner would be entitled to recover his legitimate dues from the Bank. In view of the petitioner's reinstatement, the reliefs prayed in his writ application cannot be granted. Ordinarily, claims for payment of money are not adjudicated in writ jurisdiction. This Court may not also pass an order for payment of full salary to the petitioner for the period of his suspension. This Court may, however, consider whether it might give a declaration that impugned order of suspension of the petitioner was illegal and without jurisdiction.

6. Mr. Chatterjee has contended that disciplinary action against the petitioner and the procedure therefore were wholly regulated by the provisions in Chapter XIX of the first and second bipartite settlements between Indian Bank's Association and All India Bank Employees Association. A Bank employee, under paragraph 19.12 be could only be suspended pending enquiry. According to Mr. Chatterjee, only upon issue of a charge-sheet to a Bank employee an enquiry for taking disciplinary action against him under paragraph 19.12 commences. In the instant case, on 3rd January, 1976, the Executive Regional Manager, Eastern Region of the Bank of India had suspended the petitioner while asking him to show cause why disciplinary action should not be taken against him. But the charge-sheet against the petitioner was issued only on 23rd April, 1976 which the petitioner did not receive when he moved this Court and obtained the present Rule. Therefore, the Regional Executive Manager of the Bank had illegally suspended the petitioner.

7. The main point for consideration in this Rule is whether or not the petitioner had been suspended 'pending enquiry' against him. In this connection, I have to consider when does a disciplinary enquiry against a bank employee under Chapter XIX of the aforesaid bipartite settlement commence?

8. The Chapter XIX of the by parties settlements between the Indian Banks

Association and the All India Bank Employees Association deals with disciplinary action and procedure therefore. The para 19.1 of the said Chapter supersedes paras 18.20, 18.24 and 18.28 of the Desai Award. Paragraph 18.20 of the Desai Award prescribed the procedure in case disciplinary action was proposed or likely to be taken. The Chapter XIX of the bipartite settlement has replaced and substituted the said previous procedure for disciplinary action.

9. Secondly, para 19.1 of the bipartite settlements embodied the principles to be observed in taking disciplinary actions. Paragraphs 19.1. in general terms indicates that the principles of natural justice shall be observed and the person proceeded against shall be given reasonable opportunity of defending himself against the charges preferred against him. The para 19.1, however, does not lay down the detailed procedure for achieving the objects mentioned in the said paragraph, viz., (i) framing of charges, (ii) reasonable opportunity to the person charged to give his explanation and (iii) a fair enquiry. Elaboration of these principles has been made in other paragraphs containing Chapter XIX. The words 'with this object in view, the following shall apply' in para 19.1 establish beyond doubt that the subsequent paragraphs in the aforesaid Chapter, amplify and lay down in detail the procedure for giving effect to the general principles declared in para 19.1.

10. Paragraphs 19.2 to 19.16 deal with the different facets of disciplinary action. Paragraphs 19.2 to 19.4 apply in case the management is of the opinion that an employee has committed offence, i.e., involving moral turpitude for which he is liable to conviction and sentence under any provision of law. Pending steps taken to prosecute him, a Bank employee may be suspended.

11. Paragraph 19.5 mentions the acts and omissions on the part of an employee which would be considered as gross misconduct. Paragraph 18.6 specifies different punishments which may be imposed in case an employee is found guilty of gross misconduct. Paragraphs 19.7 and 19.8 deal with minor misconduct and punishments for the same. Paragraph 19.9 prohibits imposition of more than one punishment in respect of one single charge. Paragraph 19.10 provides for maintenance of records of disciplinary actions.

12. Paragraphs 19.11 and 19.12 may be read together. When a disciplinary authority decides to take any disciplinary action, he shall communicate to the employee of the said decision within 3 days thereof. The detailed procedure for disciplinary action is laid down in para 19.12. Paragraph 19.12 (b) prescribes 'pending such enquiry he may be suspended...'. In my view, the expression 'enquiry' in this context refers to the enquiry initiated according to the procedure under para 19.12 (a) for taking disciplinary action against an employee. Only after the said procedure is started, it can be said that the enquiry is pending against the employee. In that event, he may be also suspended. The suspension under paragraph 19.12(b) is an interim one and not by way of punishment. At the same time, power of suspension under the said provision may be invoked only when an enquiry is pending and not merely contemplated. Such enquiry is clearly referable to the enquiry according to the procedure specified in para 19.12(a).

13. Mr. Gupta, appearing on behalf of the respondents 1 to 5, himself placed before me the decision of the Supreme Court in P.R. Navak v. Union of India, : (1972)ILLJ535SC . The Supreme Court in the said case interpreted the Rule 3(1) of the All India Services (Discipline and Appeal) Rules, 1969. The majority view in P. R.

Nayak's case (supra), was that the said Sub-rule (1) of Rule 3 empowered the Government which initiates any disciplinary proceedings, on being satisfied, having regard to the nature of the charges and the circumstances, of the necessity or desirability of placing under suspension... Due on , who delivered the majority judgment proceeded to observe:

The legislative scheme underlying Rule 3 is thus clearly indicative of the intention of the Rule-making authority to restrict its operation only to those cases in which the Government concerned is possessed of sufficient materials whether after preliminary investigation or otherwise and the disciplinary proceedings have in fact commenced and not merely when they are contemplated. An order of suspension before the actual initiation or commencement of disciplinary proceedings appears to us, therefore, to be clearly outside the ambit of Rule 3 straining the plain language of Rules 3(1) so as to extend it to cases in which disciplinary proceedings are contemplated and not actually initiated or commenced.

The decision in Tarak Nath Ghosh's case : (1971)ILLJ299SC , was overruled (by) the Supreme Court in P.R. Naayk's case (supra), had also explained their earlier decision in Govinda Menon's case : (1967)IILLJ219SC , by pointing out that in the said case the disciplinary proceeding had been already initiated against the officer concerned when the Government accepted the proceedings taken in the matter and decided to go forward with the disciplinary proceedings.

14. In view of the law laid down by the Supreme Court in P.R. Nayak's case (supra) and in Govinda Menoris case (supra), I must reject the extreme submission of Mr. Chatterjee that a disciplinary proceeding commences only when the charge-sheet is served upon the delinquent employee. In Govinda Menorfs case (supra), the Supreme Court pointed out that no formal order was necessary to initiate a disciplinary proceeding. But in every case a decision must be made to proceed with the disciplinary action.

Paras 19.11 and 19.12 of the Bipartite Settlements also embody the similar principles. When the disciplinary authority decides to take disciplinary action against an employee, the enquiry commences or gets started. Thus, under para 19.11 read with para 19.12, an enquiry is started from the point of time when decision is made to take disciplinary action against an employee. Paragraph 19.12 lays down the stages to be followed subsequent to the making of a decision to start a disciplinary enquiry. A charge-sheet sets forth the circumstances appearing against the employee, i.e.. the same contains the imputations and allegations in respect of which the enquiry is to be conducted. But before serving such charge-sheet, the disciplinary authority has to make a decision whether a disciplinary enquiry shall be launched in respect of allegations made against a Bank employee. A suspension under para 19.12 b may be made subsequent to making of such a decision to start the enquiry. But such suspension may be either simultaneously with the service of the formal charge-sheet under para 19.12a or even prior to such service upon the employee. I have already pointed out that para 19.1 does not contemplate any fact-finding or preliminary enquiry prior to initiation of disciplinary proceeding under para 19.12. But the disciplinary authority has to make a decision whether an enquiry under paragraph 19.12a shall be held in respect of an employee against whom there are certain allegations of misconduct I have already observed that para 19.1 is in the nature of a declaratory provision and para 19.12 is procedural.

15. In the instant case, the respondents 1 to 5 did not disclose any material to establish that on 3rd January, 1976 the Bank authorities had already decided to take disciplinary action against the petitioner. On the other hand, the Executive Regional Manager, Eastern Region by his memorandum dated 3rd January, 1976 (Annexure 'A') asked the petitioner to explain within 7 days of the receipt of the said memorandum why disciplinary action should not be taken against him. Therefore, the same was clearly a pointer to the fact that a disciplinary action was contemplated and it was not already pending when the petitioner was purported to be suspended. The differences in language in the said memorandum dated 3rd January, 1976 with the charge-sheet dated 23rd April, 1976 issued against the petitioner are significant. Whereas the Executive Regional Manager in para (2) of his said memorandum dated 3rd January, 1976 alleged that the petitioner's acts were subversive of discipline, the said officer in para (2) of the charge-sheet stated that the petitioner's acts amounted to gross misconduct of disorderly and indecent behavior in the premises of the Bank within the meaning of para 19.5 (c) ; and is giving threats of dire consequences towards the said Area Manager, Agent and other superiors are acts prejudicial to the interest of the Bank within the meaning of para 19.5 (j) of the First bipartite settlement. The Executive Regional Manager in the charge-sheet also for the first time mentioned that an enquiry will be held against him and he should report to the enquiry officer appointed for the purpose. The petitioner was also notified that he would be permitted to defend himself in the manner provided in para 19.12 of the bipartite settlements.

16. Thus, it is clear that when the Executive Regional Manager, Bank of India, Bhubaneswar Branch issued the aforesaid memorandum dated 3rd January, 1976, the Bank had not yet decided to take any disciplinary action against the petitioner. But the language of the said memorandum indicated that an enquiry for disciplinary action was likely to be initiated in future. Presumably, thereafter the Bank decided to take disciplinary action against the petitioner and then issued the charge-sheet dated 23rd April, 1976. Therefore, on 3rd January, 1976 when the petitioner was suspended, the said disciplinary enquiry had not commenced and on the said date an enquiry was not yet pending against the petitioner.

17. Mr. Gupta, learned advocate for the respondents 1 to 5, has next contended that even assuming that no enquiry was pending on 3rd January, 1976, when the petitioner was suspended; the petitioner's said suspension became effective on the date the aforesaid charge-sheet was drawn up and issued, i.e., 23rd April, 1976. According to Mr. Gupta, it was immaterial that the petitioner might not have actually received the charge-sheet when he obtained this Rule in 23rd April, 1976. In this connection, he relied upon the observations of the Supreme Court in *State of Punjab v. Khemi Ram* : [1970]2SCR657 . The Supreme Court in the said case considered what would be the effective date of the order suspending the respondent. The Court explained their earlier decision and observed :

The ordinary meaning of the word 'communicate' is to impart, confer or transmit information (cf. Shorter Oxford English Dictionary, Vol. I, page 352) As already stated, telegrams dated July 31 and August 2, 1958, were dispatched to the respondent at the address given by him where communications by Government should be dispatched. Both the telegrams transmitted or imparted information to the respondent that he was suspended from service with effect from August 2, 1958. It may be that he actually received them in or about the middle of August, 1958 after the date of his retirement. But how can it be said that the information about his

having been suspended was not imparted or transmitted to him on July, 31 and August 2, 1958, i.e., before August 4, 1958 when he would have retired? It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority, and, therefore, there would be no change whatsoever of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the concerned Government servant, it must be held to have been communicated to him, no matter when he actually received it. We find it difficult to persuade ourselves to accept the view that it is only from the date of the actual receipt by him that the order becomes effective.

18. Mr. Gupta submitted that in the instant case, the impugned order of suspension of the petitioner became effective on and from 23rd April, 1976 because on the said date the Executive Regional Manager of the Bank informed the petitioner that a disciplinary enquiry had been started against him in respect of the charges mentioned in his memorandum. Once the said order was sent out, it must be deemed that the same had been communicated to the petitioner no matter whether he had actually received it. In my view, the above contention of the learned advocate for the respondents 1 to 5 should be accepted as the same is amply supported by the aforesaid quotation from the judgment of the Supreme Court in *State of Punjab v. Khemi*, (1970) Lab.I.C. 271. Therefore, I hold that the enquiry proceeding against the petitioner had commenced on and from 23rd April, 1976 and pending such enquiry the petitioner's suspension became effective. In view of the interim order made in the present Rule, the respondents have remained restrained from further proceeding in the matter till the disposal of the Rule. As already stated the respondents have since withdrawn the suspension of the petitioner and permitted him to resume his duties.

19. Sitting in writ jurisdiction, I am not inclined to adjudicate the actual amount of emoluments payable to the petitioner since 3rd January, 1976 till he had resumed his duties. In fact Mr. Chatterjee, learned Counsel advocate for the petitioner, submitted that he was not praying for a writ of mandamus commanding the respondents to pay such arrears emoluments to his client. Therefore, it would be open to the petitioner to take recourse to any other proceeding for recovering amounts, if any, claimed by him for the period of his suspension.

20. For the foregoing reasons, I dispose of the Rule in the following terms. I hold that on 3rd January, 1976 no disciplinary enquiry against the petitioner was actually pending when he was suspended by the order of the Executive Regional Manager, Bank of India, Bhubaneswar branch. The disciplinary enquiry against the petitioner had commenced from 23rd April, 1976 and, therefore, the petitioner's suspension became operative from (he said date. There will be no further order in this Rule.

21. There will be no order as to costs.