

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

SWP No. 970/2006
CMP No. 1232/2006

Date of order: 17-03-2010

S.Chanchal Singh Vs. State Bank of India & Ors.

Coram:

Hon'ble Mr. Justice Mansoor Ahmad Mir, Judge

Whether approved for reporting: Yes.

Appearing Counsel:

For the Petitioner(s) : Mr. W.S.Nargal, Advocate.
For the Respondent(s) : Mr.Gagan Basotra, Advocate.

Petitioner was an employee of respondent-Bank, came to be dismissed from service retrospectively with effect from 17th of September' 1987 vide order dated 8th of August' 1988. Feeling aggrieved, he questioned the same before the Central Government Industrial-cum-Labour Tribunal, Chandigarh, it vide award ID No. 174/99 dated 23rd of September' 2003 partly allowed the case of the petitioner by holding that the impugned dismissal order is legal but held it illegal so far it pertains to retrospective effect. Feeling aggrieved, the petitioner has questioned the dismissal order and award of the Tribunal on the grounds taken in the writ petition.

A very short controversy is involved in this writ petition, i.e., whether the petitioner was to be given an opportunity of being heard by the respondents before passing the impugned order? If so, whether he has been heard?

In order to thrash out the question framed (supra), it is necessary to give a brief resume of the case, which has given birth to the impugned order.

Admittedly, the petitioner was an employee of respondent-Bank. It is alleged that he stole a tap and a transistor from respondent-Bank and these two articles were subject matter of a criminal case, came to be convicted by the Court of Learned Chief Judicial Magistrate, Kargil. Thereafter the Learned Magistrate, keeping in view all the facts, exercised its powers in terms of the Probation of Offenders Act, 1958 and suspended the order of sentence and directed the petitioner to execute an undertaking. The undertaking came to be executed and order of sentence came to be kept under eclipse.

But despite all that, the respondent-Bank dismissed the petitioner vide order no. RI/DAC/I dated 8th of August' 1988. It is positive case of the petitioner that he came to be

dismissed without any proper inquiry. Even he was not afforded an opportunity of hearing.

It is contended on behalf of the respondent-Bank that petitioner was heard and after providing him an opportunity of being heard, the order of dismissal came to be passed.

While going through reply/counter, it is crystal clear that no notice was served upon the petitioner, though, according to respondents notices were issued. It is specifically averred in para 8 of the writ petition that petitioner was not heard and without conducting inquiry, impugned order came to be passed. Respondents, while replying, in para no. 7 have admitted that notice was sent for service of petitioner, but was received back un-served. It is profitable to reproduce para no.7 of the reply herein:-

“That in reply to the contents of para 8 & 9, it is submitted that the petitioner was duly served with a show cause notice at his admitted address which **was returned unserved**. The answering respondents were well within its right to dismiss the petitioner in view of his conviction in a theft case involving moral turpitude.”

Thus, the respondents have admitted that notice was

not served upon the petitioner. Mr. Basotra, in support of his arguments relied upon a case titled as Sowarn Singh Vs. State Bank of India & Ors., reported in 1986 (2) SLR 238. In this case notice was served to the petitioner and he was heard personally. Applying the same yardstick to the case in hand, neither notice was served upon the petitioner nor he was heard. It appears that petitioner came to be condemned unheard. Mandate of law requires that employer has to hear his employee and has to follow due procedure while conducting departmental inquiry. Apex Court in a case titled Mathura Prasad Vs. Union of India & Ors reported in 2007 Vol-1 SCC - 437, held that where on the result of the inquiry the employee is likely to be deprived of his livelihood, the prescribed procedure must be strictly followed. It is profitable to reproduce para no. 19 herein:-

“19. When an employee, by reason of an alleged act of misconduct, is sought to be deprived of his livelihood, the procedures laid down under the sub-rules are required to be strictly followed. It is now well settled that a judicial review would lie even if there is an error of law apparent on the face of the record. If statutory authority uses its power in a

manner not provided for in the statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may attract the principles of judicial review. “

The questioned framed is answered, accordingly.

Second question which needs to be determined is whether an employee who stands convicted but released on probation can be dismissed from service automatically without conducting an inquiry or without doing anything more.

Admittedly, as discussed herein above, the petitioner stands released on probation and subject matter of theft was of trivial nature. It is worthwhile to reproduce Section 12 of The Probationer of Offenders Act, 1958, which reads as under:-

“12. Removal of disqualification attaching to conviction.-

Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law:

Provided that nothing in this section shall apply to a person, who after his release under section 4 is subsequently sentenced for the original offence.”

Apex Court in a case titled Union of India & Ors Vs. Narsingh & Abdul Hamid, reported in AIR 1975 SC 2216, held that if conviction is suspended and convict is released on probation that cannot be said to be a “**dis-qualification**”. They have said that “it is a fallacy to presume that a conviction of a delinquent employee simpliciter without doing anything more will result in his automatic dismissal or removal from service.”

The word “**dis-qualification**” used in Section 12 means that an employee is unfit for doing something but it nowhere provides that it can be made basis for his dismissal. Delhi High Court in a case titled Iqbal Singh Vs. Inspector General of Police & Ors., reported in AIR 1970 DELHI 240 laid down same principle of law wherein it has been held as under:-

“16. The word “disqualify” is also stated to mean- making someone unfit for something. The further meaning given is that the person may be deprived within the meaning of the word “disqualify” of any right or privilege. We are of the view

that the words “disqualification, if any, attaching to a conviction of an offence” as used in Section 12 of the Act would include a person's losing his right or qualification to remain or to be retained in service. Section 12 of the Act, clearly saves the convict from suffering such disqualification attaching to his conviction. In respect of his conviction, the petitioner had the protection of Section 12 and he was saved from suffering from any disqualification such as the one which resulted in his dismissal.”

It has been further held in para 18 as under:-

“18. The learned counsel for the petitioner has relied upon the observations of the Supreme Court made in A.K.Kraipak V. Union of India, 1969 Ser LR 445=(AIR 1970 150). The observations made in that case support our view. The orders which may be passed, while exercising quasi-judicial authority and even executive or administrative orders which adversely affect persons can be passed only after complying with the principles of natural justice. In our view the petitioner has not been given any such opportunity. The order of dismissal deserves to be quashed on this ground as well.”

Keeping in view the discussion made herein-above, I am of the opinion that the petitioner came to be condemned unheard. Entire exercise is violative of principles of natural justice. Accordingly, the impugned order and order of Tribunal merit to be quashed.

Having glance of the above discussion, the order of Tribunal as well as the order of dismissal are quashed. However, respondents are at liberty to conduct inquiry, if they choose so, within two months from today. In case inquiry is not conducted, then it is provided that the petitioner shall not be entitled to salary from the date of dismissal till date. However, the period shall qualify for other service benefits.

Disposed of along with all CMPs as indicated above.

(MANSOOR AHMAD MIR)
Judge

Jammu:
17-03--2010
Sanjay

