

A

MARWAR GRAMIN BANK AND ANR.

v.

RAM PAL CHOUHAN

APRIL 27, 2006

B

[ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

*Service Law:*

C

*Marwar Gramin Bank (Staff) Service Regulations, 1980; Regulation 30(1)(f):*

D

*Employee—Illegal gratification/mis-conduct—Disciplinary proceedings—Dismissal of employee from service—Challenge to—Dismissed by Single Judge of High Court—Reversed by the Division Bench of the High Court quashing the order of dismissal—On appeal, Held: Admission of charges by the employee—Other persons could have hardly thrown any light on these issues—In the absence of witnesses to the incident, no prejudice was caused by the authorities by non-observance of principles of natural justice—Since finding as regards the charges in question was not considered by the High Court in the proper perspective, the matter remitted back to the High Court for consideration afresh.*

E

**The respondent-employee was dismissed from service having been found guilty of the charge of misconduct/illegal gratification under the provisions of Regulations 30(1)(f) of the Marwar Gramin Bank (Staff) Service Regulations, 1980.**

F

**Questioning the order passed by the Disciplinary Authority, the respondent filed a writ application which was dismissed by the Single Judge. On appeal, Division Bench of the High Court quashed the orders of Disciplinary Authority and that of the Appellate Authority. Hence the present appeal.**

G

**The appellants contended that the principles of natural justice have no application to the facts of the present case; and that the High Court did not deal with all the charges separately.**

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**Disposing of the appeal, the Court**

**HELD:** The Branch Manager had deposed as a management witness. He was cross-examined by the respondent-employee, but further prayer was made to produce him again. No reason was indicated as to why such a prayer was being made, when he was already cross examined. As a matter of fact, the sustainability of charge nos. 6 and 7 depended on the accepted stand of the respondent. Other persons could have hardly thrown any light on the issue. He appears to have accepted the allegations. That being so, the question of any prejudice being caused by alleged non-observance of principles of natural justice in the absence of the witnesses being called does not arise. The High Court does not appear to have considered this aspect and had in a routine manner applied the logic applicable to the other charges to charge nos. 6 and 7. The notice issued was restricted to the findings as regards charge nos. 6 and 7. As the High Court has not considered the issue in the proper perspective, the matter is remitted back for consideration afresh on charge Nos. 6 and 7. However, it is clarified that no opinion has been expressed on the merits of the case.

[412-F-G-H; 413-A]

**CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 2324 of 2006.

From the Order dated 3.6.2004 of the High Court of Judicature Rajasthan in D.B.C.S.A. (Writ) No. 617/2003.

Amarendra Sen, Nalin Sangal, Deba P. Mohanty and Anil Kumar Sangal for the Appellants.

Manu Mridul, Kailash Chandra Bhatt, Anand Kumar Vatsya and Surya Kant for the Respondent.

The Judgment of the Court was delivered by

**ARIJIT PASAYAT, J.** Leave granted.

Challenge in this appeal is to the correctness of the judgment rendered by a Division Bench of the Rajasthan High Court, Jodhpur allowing the D.B. Civil Special Appeal (Writ) No.617 of 2003 filed by the respondent. By the impugned order the High Court held as follows:

“In view of the aforesaid discussion, we are of the view that the impugned order of termination dated 8th August, 1995 suffers from the procedural error leading to the manifest injustice or the vice of

A violation of principles of natural justice.

B Consequently, special appeal is allowed. The order of the leaned Single Judge dated 22nd July, 2003 is set aside. The writ petition is allowed. The order of the Disciplinary Authority dated 3rd August, 1995-Annexure-1 and the order of the Appellate Authority dated 28.12.1995-Annexure-2 are quashed and set aside. It is directed that the appellant shall be reinstated in service with all consequential benefits."

C On 27.9.2004 notice was issued by this Court limited to sustainability of High Court's judgment *vis-a-vis* charge Nos.6 and 7.

A brief reference to the factual aspects would suffice.

D The respondent was dismissed from service under the provisions of Regulations 30(1)(f) of the Marwar Gramin Bank (Staff) Service Regulations, 1980 (hereinafter referred to as the "Regulations") having been found guilty of the charge of misconduct levelled against him while he was posted at Sarnau Branch of the appellant-Marwar Gramin Bank in District Jalore. A complaint came to be filed by some of the loanees against him alleging *inter alia* that he demanded bribe for providing them relief under the Agricultural Rural Bank Relief Regulations. A preliminary enquiry was conducted by E Shanti Lal Sharma, who recorded the statements of the Manager, Field Supervisor and other staff members and also recorded the statements of the complainants. After conducting the preliminary enquiry, disciplinary proceedings were initiated under Regulation 30 of the Regulations. The respondent was served with a memorandum dated 6.9.1991 whereby he was F informed that an enquiry is proposed against him on the charges set out in the statement of charges and explained in the statement of allegations. The charges against the respondent set out are as follows:-"

"Charge No.1

G That the respondent demanded Rs.100 from one Narsi as bribe for closing his account and he told the loanees to give money and take the deposit receipts later on and because of not giving of receipts by him, he loanees did not deposit the money in the Bank and therefore, he did not watch the interest of the Bank and thus, the violated Regulations 17 and 19 of the Regulations of 1980.

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*Charge No.2*

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That the respondent did not give correct information to Ganesha and Mohan Lal in respect of their accounts and he harassed the loanees and by not giving correct information to the loanees and harassing the loanees, he violated Circular dated 27.7.1981 and further, he collected Rs.232.65 more from Mohan Lal as bribe and thus, he violated Regulations 17 and 19 of the Regulations of 1980.

B

*Charge No.3*

That the respondent demanded Rs.200 as bribe from one Karmi and further, the respondent was given Rs.1400/- towards loan amount by Karmi, but the respondent did not deposit that money in the Bank and kept that amount with him unauthorisedly and thus, he did not deposit the amount received from the loanees in the bank and thus, violated the Circular dated 18.2.1984 and further by demanding bribe and keeping the recovered amount towards loan with him, he violated the provisions of Regulations 17 and 19 of the Regulations of 1980.

C

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*Charge No.4.*

That similarly, the respondent also demanded bribe from Teja and further, he took Rs. 1300 from Teja, but did not deposit that money in the Bank and kept that amount with him unauthorisedly and therefore, he violated the instructions contained in the circulars dated 27.7.1981 and 18.2.1984 and also violated the provisions of Regulations 17 and 19 of the Regulations of 1980.

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*Charge No.5*

That the respondent did not give correct information to the loanees in respect of balance and already deposited loan amount and he harassed the loanees and also gave wrong information to them and thus, he lowered down the image of the Bank.

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*Charge No.6*

That on 25.10.1990, he was Cashier and cash book was not closed by him on that day and though the amount was actually received on 26.10.1990, but he issued the receipts in the date of 25.10.1990 and thus, violated the instructions contained in Circular dated 18.2.1984.

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*Charge No.7*

That on the vouchers dated 25.10.1990, the respondent did not mention

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A the description of notes.”

Questioning the order passed by the Disciplinary Authority, a writ application was filed which was dismissed by learned Single Judge. Special Appeal was allowed by the Division Bench and the orders of Disciplinary Authority and that of the Appellate Authority were quashed.

B Learned counsel for the appellants submitted that the logic of alleged violation of principles of natural justice have no application to the facts of the present case and in any event relating to charge nos. 6 and 7. The explanation offered by the respondent was duly considered and was found unacceptable. The High Court did not deal with charge nos. 6 and 7 separately and the principles in relation to charge nos. 1 to 5 were applied to charge nos. 6 and 7 also.

C Learned counsel for the respondent on the other hand submitted that the High Court has taken note of the deficiencies in the conduct of proceedings and has rightly interfered with the order passed by the authorities. It is to be noted that in the counter affidavit filed in this Court it has been stated as follows:

E “3(a) That when witness Shri Mangla Ram was questioned vide Question No.22 whether on that day i.e. 26.10.1990 Mohan/Rama came to get his accounts closed and had brought 3 to 4 other loanees with him, Shri Choudhury answered that the Account of Mohan son of Rama being DIR/26 stood closed on 25.10.90.”

F It appears from the record that the Branch Manager Shri Mangla Ram had deposed as a management witness. He was cross-examined by the respondent; but further prayer was made to produce Shri Mangla Ram Choudhury again. No reason was indicated as to why such a prayer was being made, after he had cross examined him. As a matter of fact, the sustainability of charge nos. 6 and 7 depended on the accepted stand of the respondent. Other persons could have hardly thrown any light on the issue. He appears to have accepted the allegations. That being so, the question of any prejudice being caused by alleged non-observance of principles of natural justice in the absence of the witnesses being called does not arise. The High Court does not appear to have considered this aspect and had in a routine manner applied the logic applicable to the other charges to charge nos. 6 and 7.

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The notice issued was restricted to the findings as regards charge nos. 6 and 7. As the High Court has not considered the issue in the proper perspective, we remit the matter for consideration afresh on charge Nos. 6 and 7. We make it clear that we have not expressed any opinion on the merits of the case. A

The appeal is accordingly disposed of, with no order as to costs. B

S.K.S.

Appeal disposed of.