Supreme Court of India
Allahabad Bank & Ors vs Krishna Narayan Tewari on 2 January, 2017
Author: T . T.S.
Bench: T.S. Thakur, A.M. Khanwilkar

R E P O R T A B L E

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7600 OF 2014

ALLAHABAD BANK & ORS. ...Appellant(S)

Versus

KRISHNA NARAYAN TEWARI Respondent(S)

J U D G M E N T

T.S. THAKUR, CJI.

1. In this appeal by special leave the appellant calls in question the correctness of a judgment and order dated 28th October, 2013 passed by the High Court of Judicature at Allahabad, Lucknow bench, whereby Writ Petition No.2867 of 2006 filed by the respondent has been allowed and an order dated 29th July, 2005 passed by the Disciplinary Authority and that dated 5th January, 2006 passed by the Appellate Authority directing removal of the respondent from the service of the appellant-bank quashed. The High Court has as a result directed the appellant bank to provide all service/retiral benefits to the petitioner within ninety days of the order. The challenge mounted by the appellant arises in the following circumstances:

2. The respondent was employed with the appellant-bank and was during the relevant period posted as Officer in-charge at the appellant-banks Sultanpur branch in District Sultanpur in the State of Uttar Pradesh. He was, by an order dated 10th December, 2004, placed under suspension in contemplation of a disciplinary enquiry which was initiated against him with the service of a charge-sheet dated 10th February, 2005. The respondent pleaded not guilty but the Enquiry Officer concluded the enquiry proceedings rather quickly within a span of just about forty-five days and submitted a report dated 27th May, 2005 holding that the respondent was guilty on all counts except two which were held proved but only partially. The Disciplinary Authority accepted the findings and passed an order imposing upon the respondent the major penalty of removal from service.

3. Aggrieved, the respondent preferred a departmental appeal which was dismissed by the Appellate Authority by its order dated 5th January, 2006. The respondent then questioned the said two orders before the High Court in a writ petition which as noticed earlier has been allowed by the High Court in terms of the order impugned in this appeal.

4. The High Court came to the conclusion that neither the Disciplinary Authority nor the Appellate

Authority had applied their mind or recorded reasons in support of their conclusions. Relying upon the decisions of this court in Roop Singh Negi v. Punjab National Bank & Ors. (2009) 2 SCC 570, Kuldeep Singh v. Commissioner of Police & Ors. (1999) 2 SCC 10, Nand Kishore v. State of Bihar (1978) 3 SCC 366, Kailash Nath Gupta v. Enquiry Officer, Allahabad Bank & Ors. (2003) 9 SCC 480, State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya (2011) 4 SCC 584 and Mohd. Yunus Khan v. State of U.P. & Ors. (2010) 10 SCC 539, the High Court held that the order passed by the disciplinary authority and the appellate authority were unsustainable in law. The High Court found that the findings recorded by the Disciplinary Authority and affirmed by the Appellate Authority were perverse and were based on no evidence whatsoever. The High Court observed that the Appellate Authority had not applied its mind independently and simply cut and pasted the findings of the Disciplinary Authority while dismissing the appeal.

5. On behalf of the appellant-bank it was contended before us that the High Court had exceeded its jurisdiction in re-appreciating the evidence and holding the respondent not guilty. It was argued that so long as there was some evidence on which the Disciplinary Authority could rest its findings, sufficiency or insufficiency of such evidence could not be gone into by a Writ Court. Alternatively, it was submitted that even if there was any infirmity in the orders passed by the Disciplinary Authority or the Appellate Authority, on account of absence or insufficiency of the reasons in support of the findings recorded by them, the proper course for the High Court was to remand the matter back to the Appellate Authority or the Disciplinary Authority as the case may be for doing the needful afresh. The High Court could not, on account of absence of reasons or unsatisfactory appraisal of the evidence by them, quash the order of punishment and direct release of the service benefits due to the respondent.

6. On behalf of the respondent it was on the other hand contended that the enquiry conducted against the respondent and the conclusion arrived at by the Enquiry Officer, Disciplinary Authority and the Appellate Authority suffered from fatal defects. Firstly, because the enquiry conducted by the Enquiry Officer was unfair and had resulted in gross miscarriage of justice on account of the failure of the Enquiry Officer to provide a reasonable opportunity to the respondent to lead evidence in his defense. In the second place the findings recorded by the Enquiry Officer and so also the Disciplinary Authority were unsupported by any evidence whatsoever and were perverse to say the least. In the third place, the orders were unsustainable also for the reason that the same did not disclose due and proper application of mind by the Disciplinary Authority and the Appellate Authority. The order passed by the Appellate Authority was, in particular, bad in law as the same did not examine the material on record independently and had simply relied upon the findings of the Disciplinary Authority without adverting to the points which the respondent had raised in support of his challenge. It was lastly submitted that the respondent has since superannuated and was a physical wreck having suffered a heart attack and a debilitating stroke which had confined him to bed. Any remand of the proceedings to the Appellate Authority to pass a fresh order or the Disciplinary Authority for re-examination and fresh determination of the respondents guilt would not only be harsh but would tantamount to denial of justice to him. The High Court was in that view justified in taking a pragmatic view of the matter and in directing continuity of service to the respondent and release of all service and retiral benefits to him upto the date of his superannuation.

7. We have given our anxious consideration to the submissions at the bar. It is true that a writ court is very slow in interfering with the findings of facts recorded by a Departmental Authority on the basis of evidence available on record. But it is equally true that in a case where the Disciplinary Authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the Enquiry Officer or the Disciplinary Authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment. The High Court has, in the case at hand, found all these infirmities in the order passed by the Disciplinary Authority and the Appellate Authority. The respondents case that the enquiry was conducted without giving a fair and reasonable opportunity for leading evidence in defense has not been effectively rebutted by the appellant. More importantly the Disciplinary Authority does not appear to have properly appreciated the evidence nor recorded reasons in support of his conclusion. To add insult to injury the Appellate Authority instead of recording its own reasons and independently appreciating the material on record, simply reproduced the findings of the Disciplinary Authority. All told the Enquiry Officer, the Disciplinary Authority and the Appellate Authority have faltered in the discharge of their duties resulting in miscarriage of justice. The High Court was in that view right in interfering with the orders passed by the Disciplinary Authority and the Appellate Authority.

8. There is no quarrel with the proposition that in cases where the High Court finds the enquiry to be deficient either procedurally or otherwise the proper course always is to remand the matter back to the concerned authority to redo the same afresh. That course could have been followed even in the present case. The matter could be remanded back to the Disciplinary Authority or to the Enquiry Officer for a proper enquiry and a fresh report and order. But that course may not have been the only course open in a given situation. There may be situations where because of a long time lag or such other supervening circumstances the writ court considers it unfair, harsh or otherwise unnecessary to direct a fresh enquiry or fresh order by the competent authority. That is precisely what the High Court has done in the case at hand. The High Court has taken note of the fact that the respondent had been placed under suspension in the year 2004 and dismissed in the year 2005. The dismissal order was challenged in the High Court in the year 2006 but the writ petition remained pending in the High Court for nearly seven years till 2013. During the intervening period the respondent superannuated on 30th November, 2011. Not only that he had suffered a heart attack and a stroke that has rendered him physically disabled and confined to bed. The respondent may by now have turned 65 years of age. Any remand either to the Enquiry Officer for a fresh enquiry or to the Disciplinary Authority for a fresh order or even to the Appellate Authority would thus be very harsh and would practically deny to the respondent any relief whatsoever. Superadded to all this is the fact that the High Court has found, that there was no allegation nor any evidence to show the extent of loss, if any, suffered by the bank on account of the alleged misconduct of the respondent. The discretion vested in the High Court in not remanding the matter back was, therefore, properly exercised.

9. The next question is whether the respondent would be entitled to claim arrears of salary as part of service/retiral benefits in full or part. The High Court has been rather ambivalent in that regard. We say so because while the High Court has directed release of service/retiral benefits, it is not clear whether the same would include salary for the period between the date of removal and the date of superannuation. Taking a liberal view of the matter, we assume that the High Courts direction for release of service benefits would include the release of his salaries also for the period mentioned above. We are, however, of the opinion that while proceedings need not be remanded for a fresh start from the beginning, grant of full salary for the period between the date of dismissal and the date of superannuation would not also be justified. We, therefore, allow this appeal but only in part and to the extent that while orders passed by the Disciplinary Authority and the Appellate Authority shall stand quashed, and the respondent entitled to continuity of service till the date of his superannuation with all service benefits on that basis, he shall be entitled to only 50% of the salary for the period between the date of his removal from service till the date of superannuation. Retiral benefits shall also be released in his favour. The order passed by the High Court shall, to the extent indicated above, stand modified. The parties shall bear their own costs.

...CJI.

(T.S. THAKUR) ...J.

(A.M. KHANWILKAR) New Delhi January 2, 2017