

STATE BANK OF BIKANER AND JAIPUR

v.

SRINATH GUPTA AND ANR.

OCTOBER 25, 1996

[J.S. VERMA AND B.N. KIRPAL, JJ.]

Service Law : Disciplinary proceedings—Statement under Section 161 Cr. P.C. taking of on record in Departmental Enquiry—Read over and admitted by witness—Copy of statement given to the employee—Cross examination of the witness—Opportunity given—Whether enquiry vitiated—Held—No illegality committed—Enquiry Proceedings not vitiated.

An FIR was lodged with the CBI against respondent no.1 alleging that he had demanded and accepted illegal gratification. Respondent no.1 was dismissed from service after a departmental enquiry. Appeal before the appropriate authority was dismissed. The Tribunal upheld the dismissal order. On appeal before the High Court the Single Judge allowed the writ petition directing the appellant Bank to reinstate respondent no.1. The appeal preferred by the appellant before the Division Bench of High Court was dismissed. Aggrieved by the said judgment, the appellant has preferred the the present appeal.

Allowing the appeal, this Court

HELD : 1. The statements under Section 161 Cr.P.C. may not be admissible in the criminal trial but can be produced in a disciplinary inquiry. The person who made the statement has been examined before the Inquiry Officer. The statement recorded under Section 161 Cr.P.C. was read over to the witness who admitted the contents thereof and the statement became part of the examination-in-chief of the witnesses before the Enquiry Officer. The copy of the statement had been given to the respondent in advance and full opportunity was granted to the respondent to cross examine the witnesses. No illegality had been committed by taking on record the statements which had been made under Section 161 Cr.P.C. and the conclusion of the High Court that the disciplinary proceedings stood vitiated is not correct. [784-E-G]

2. On the question regarding presence of CBI Inspector during the

A disciplinary proceedings, when the objection of his presence was raised he was removed from there. This being so one of the reasons given by the single judge for setting aside the award was based on wrong premise. [787-E]

3. The Judgement of the single Judge and the Division Bench are set-aside. Payments made to respondent no.1 during the pendency of appeal by reason of interim order are not required to be refunded. [787-G]

State of Mysore v. S.S. Makapur, [1963] 2 SCR 943, relied on.

State of Haryana v. Rattan Singh, (1982) 1 LLJ 46; *Khatri and ors. v. State of Bihar & ors.*, [1981] 3 SCR 145 and *M/S Kosoram Cotton Mills Ltd. v. Gangadhar and Ors*, [1964] 2 SCR 809, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3847 of 1993.

From the Judgment and Order dated 21.10.92 of the Rajasthan High Court in D.B.S.A. No. 563 of 1992.

G.L. Sanghi and A.V. Rangam for the Appellant.

V.M. Tarkunde and Sushil Kr. Jain for the Respondents.

The Judgement of the Court the was delivered by

KIRPAL, J. This appeal by special leave arises from the judgment of the Division Bench of the Rajasthan High Court which dismissed the appeal filed by the appellant against the judgment of the Single Judge who had allowed the writ petition filed by respondent No.1 quashing the order of the Central Government Industrial Tribunal (hereinafter referred to as 'the Tribunal') which had upheld the dismissal of the said respondent No.1 pursuant to the proceedings which had been held.

Respondent No.1 was initially appointed as cashier-cum-godown keeper by the appellant bank in the year 1961. He was promoted as Head-Cashier on 25.3.1970 and was posted at Sunel Branch of the Bank. In June, 1973, he was transferred to Sangod Branch.

On 31.3.1975, the appellant lodged with the Central Bureau of Investigation (hereinafter referred to as 'C.B.I.'), an F.I.R. in which it was, *inter alia*, alleged that while working as the cashier at the Sunel Branch during the year 1970-1971, the said respondent had demanded and accepted illegal

gratification from a number of persons in consideration of his showing favours to them in getting their loans sanctioned. The C.B.I. submitted its final report on 21.2.1977 stating that no reliable evidence was available in support of the allegations and that the evidence against the said respondent was scanty. The final report was accepted by the Court on 2.11.1977 and no prosecution of the respondent took place. A

In the meantime departmental disciplinary proceedings were commenced by the appellant. On 22.3.1976, a charge-sheet was served on the respondent. These charges were as follows : B

"(1) You demanded and accepted bribe from the following persons as mentioned against each for arranging sanction of bank loans in their favour: C

NAME	AMOUNT OF BRIBE
S/SHRI	Rs.
Ashraf Ali	50/-
Dhana Lal	50/-
Raghu Nath	100/-
Mitthu Lal	50/-
Mohan Lal	350/-
Bapu Lal	300/-
Ram Singh	350/-
Kanhi Ram	350/-
Mangu	375/-

(ii) You demanded and accepted Rs. 20/- in the month of May 1973 as bribe from Smt. Phuli Bai Sweepers at Sunel Branch for arranging payment of bonus amounting to Rs. 80/- payable to her. G

(iii) You demanded and accepted bribe of Rs. 500/- (Rs. 50/- per month) w.e.f. August, 1972 to May, 1973 from Shri Nemi Chand for arranging for him a temporary appointment of a Peon at the H

A branch on 5th August, 1972.

(iv) You raised a fictitious loan of Rs. 1000/- at the branch in the name of one Shri Panna Lal by getting the same guaranteed by your brother Shri Jagdish Chandra."

B After the Inquiry Officer was appointed, the inquiry proceedings commenced. Deposition of a number of prosecution witnesses was recorded including the statements of Ashraf Ali and Dhanna Lal, from whom bribe was alleged to have been demanded for getting the loan sanctioned. Some of the other witnesses, however, turned hostile. Statements of the concerned witnesses including those of Ashraf Ali and Dhanna Lal had earlier been recorded by the appellant under Section 161 Cr.P.C. During the examination of these witnesses before the inquiry officer, these statements were brought on record as part of the deposition. It appears that copies of these statements were given to the respondent workman in advance and the contents of the same were admitted by the witnesses and opportunity was given to the said workman to cross-examine them.

E The Inquiry Officer submitted his report on 10.2.1979 and as a consequence thereof, a notice was issued to respondent No.1 to show cause why he should not be dismissed from service. A reply was submitted by the workman on 11.3.1979 and on 27.6.1979, the appellant passed an order dismissing him from service. An appeal, against the order of dismissal filed before the appropriate authority was dismissed on 2.8.1979.

F The respondent then approached the Conciliation Officer, Kota and a failure report was sent to the Government. Thereupon the Central Government referred the following dispute to the Tribunal:

G "Whether the action of the management of State Bank of Bikaner & Jaipur in dismissing Shri S.N. Gupta, Head Cashier, Pipalda Branch in District Kota with effect from 6.7.1979 is justified? If not, to what relief is the workman concerned entitled?"

H Vide Award dt. 9.4.1984, the Tribunal upheld the dismissal of the said respondent. The workman then filed a writ petition number 631 of 1984 before the Rajasthan High Court at Jaipur. By judgment dated 17.12.1984 the Award of the Tribunal was set aside and the case remanded

with certain directions, inter alia, relating to the question as to whether the domestic enquiry was defective or not and whether the punishment awarded was justified. Thereafter the Tribunal again passed an award dated 29.5.1985 confirming its earlier decision and it upheld the dismissal of the said respondent. A

The respondent No.1 then filed a fresh writ petition in the Rajasthan High Court. Vide judgment dated 5.8.1992, a Single Judge of the High Court allowed the writ petition. The award dated 29.5.1985 was quashed and respondent No.1 was directed to be taken on duty forthwith. In regard to back wages, it was held that respondent No.1 would be entitled to 50% of the total amount which may be found due to him subject to any deduction therefrom if he had worked during that period. The appellant then filed an appeal before the Division Bench of the High Court but the same was dismissed on 21.10.1992 with a modification that respondent be paid 30% of the salary for the period during which the inquiry had remained pending. Aggrieved by the said judgment, the appellant has preferred the present appeal. B C D

The respondent had succeeded before the High Court on two grounds, firstly; the High Court came to the conclusion that the statements which had been recorded under Section 161 Cr.P.C. were not admissible and, therefore, the decision of the Tribunal stood vitiated. Secondly, the Single Judge had also held that during the course of disciplinary proceedings, C.B.I. Inspector had remained therein and his presence itself had also vitiated the proceedings because the witnesses were under a fear to state the whole truth contrary to what had been recorded earlier by the C.B.I. Inspector. E

As regards the statements under Section 161 Cr.P.C. are concerned, we find that the said statements were supplied to the respondent on 1.11.1976. The evidence of these persons, we are informed, was recorded on 5.4.1977. The procedure which was followed by the Inquiry Officer, relating to the taking on record of these statements under Section 161 Cr.P.C. would be evident from the proceedings of the Inquiry Officer which are as follows: F G

"The bank representative produced his witness Sri Dhannalal s/o Mangilal residence of Sunel for evidence. At this moment Sri S.L. Gupta, employees representatives raised his objection to the pro- H

A cedure of reading the statement of the witnesses by bank representative previously recorded.

With a view to offer equal opportunity to both the sides and to enable the bank to present the case in the proper manner, as a norm of the domestic enquiry, I allow this procedure to continue and proceed further in the case.

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The statement of Dhannalal s/o Mangilal previously recorded by the CBI Inspector was read over to him by the bank representative. Sri Dhannalal admitted the contents of the statement.

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Cross examination by defence....."

According to the appellant in respect of Ashraf Ali also a similar procedure was followed. It is now well-settled that strict rules of evidence are not applicable and are not required to be followed in domestic inquiry e.g. see *State of Haryana v. Rattan Singh*, (1982) 1 LLJ. 46. What has to be ensured is that the principles of natural justice are complied with and the delinquent workman has the opportunity of defending himself.

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The statements under Section 161 Cr.P.C. may not be admissible in the criminal trial, but the said statements can be produced in a disciplinary inquiry like the present. The person who made the statement has been examined before the inquiry officer. It was open to the witness to have stated orally the entire contents of what was recorded in his statement under Section 161 Cr.P.C. Instead of following this time consuming procedure, the said statement recorded under Section 161 Cr.P.C. was read over to the witness who admitted the contents thereof. In this way the earlier statement under Section 161 Cr.P.C. became a part of the examination-in-chief of the witness before the Inquiry Officer. It is not in dispute that the said statements had been given to the respondent in advance and full opportunity was granted to the respondent to cross-examine the said witnesses. This being the case, it is difficult to appreciate as to how the high court could have come to the conclusion that the inquiry proceedings stood vitiated.

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In coming to the aforesaid conclusion, we are fortified by the decision of a Constitution Bench of this Court in the case of *State of Mysore v. S.S. Makapur* [1963] 2 SCR 943. In that case also, statements of witnesses

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which had been recorded behind the back of the delinquent officer were taken on record and an opportunity of cross-examination was given. The High Court had come to the conclusion that the principles of natural justice had not been followed because of the admission in evidence of such statements. While allowing the appeal and rejecting the contention of the respondent therein, this Court in *S.S. Makapur's* case (supra) at page 951 observed as follows :

"When the evidence is oral, normally the examination of the witness will in its entirety, take place before the party charged, who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party, and he is given an opportunity to cross-examine him. To require in that case that the contents, of the previous statement should be repeated by the witness word by word, and sentence by sentence, is to insist on bare technicalities, and rules of natural justice are matters not of form but of substance. In our opinion they are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged, and he is given an opportunity to cross-examine them."

The aforesaid observations apply in the present case as well. In *Khatri & Ors. etc. v. State of Bihar & Ors.*, [1981] 3 SCR 145, dealing with petition under Article 32 of the Constitution, the question arose whether the statements made before the police officer in the course of investigation could be directed to be produced and whether the bar of Section 162 Cr.P.C. applied or not. In this connection, it was observed, at page 152, as follows :

"It bars the use of any statement made before a police officer in the course of an investigation under Chapter XII, whether recorded in a police diary or otherwise, but by the express terms of the Section this bar is applicable only where such statement is sought, to be used at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. If the statement made before a police officer in the course of an investigation under chapter XII is sought to be used in any

A proceeding other than an inquiry or trial or even at an inquiry or trial but in respect of an offence other than that which was under investigation at the time when such statement was made, the bar of Section 162 would not be attracted."

B Mr. Tarkunde, learned counsel for the respondent, however, placed strong reliance on the following observations of this Court in *M/S. Kosoram Cotton Mills Ltd. v. Gangadhar and others*, [1964] 2 SCR 809, at page 827:

C "Further we can take judicial notice of the fact that many of our industrial workers are illiterate and sometimes even the representatives of labour union may not be present to defend them. In such a case to read over a prepared statement in a few minutes and then ask the workmen to cross-examine would make a mockery of the opportunity that the rules of natural justice require that the workmen should have to defend themselves. It seems to us therefore that when one is dealing with domestic inquiries in industrial matters, the proper course for the management is to examine the witnesses from the beginning to the end in the presence of the workman at the enquiry itself. Oral examination always takes much longer than a mere reading of a prepared statement of the same length and brings home the evidence more clearly to the person against whom the inquiry is being held. Generally speaking therefore we should expect a domestic inquiry by the management to be of this kind."

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The aforesaid observations do imply that oral examination should take place and reading of a prepared statement may cause prejudice but the Court did not hold that the procedure which has referred to in *Shibavasappa's* case (supra) was illegal. In fact in the very next sentence, it was observed in the said case as follows :

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G "Even so, we recognise the force of the argument on behalf of the appellant that the main principles of natural justice cannot change from tribunal to tribunal and therefore, it may be possible to have another method of conducting a domestic inquiry (though we again repeat that this should not be the rule but the exception) and that is in the manner laid down in *Shibavasappa's* case. The minimum that we shall expect where witnesses are not examined from the very beginning at the enquiry the presence of the person charged

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is that the person charged should be given a copy of the statements made by the witnesses which are to be used at the inquiry well in advance before the inquiry begins and when we say that the copy of the statements should be given well in advance we mean that it should be given at least two days before the inquiry is to begin." A

In the present case, statements under Section 161 Cr.P.C. had been given to respondent No.1 a number of months before the witnesses were examined. Therefore, even the minimum requirement which is referred to in *Kesoram Cotton Mills Ltd.* case (supra) was complied with. B

From the aforesaid discussion the only conclusion which could be arrived at is that in the present case no illegality had been committed by taking on record the statements which had been made under Section 161 Cr.P.C. and the conclusion of the High Court which has held that the disciplinary proceedings stood vitiated, is not correct. C

Coming to the question with regard to the presence of a C.B.I. Inspector during the disciplinary proceedings, Mr. G.L. Sanghi, learned counsel for the appellant, has drawn our attention to the observation in the award of the Tribunal in which it is stated that the C.B.I. Inspector was one of the witnesses in the enquiry. When the objection regarding his presence was raised then he was removed from there. This being so, one of the reasons given by the Single Judge for setting aside the award, was based on a wrong premise. In fact, the Division Bench did not base its decision on this ground. D E

For the aforesaid reasons, this appeal is allowed. The Judgments of the Single Judge and the Division Bench of the Rajasthan High Court are set aside. During the pendency of this appeal, by reason of the interim order passed by this Court, certain payments have been made to the respondent. In the circumstances of the case we direct that the amount so paid is no required to be refunded. There will be, however, no order as to costs. F

S.V.K.I.

Appeal allowed. G