

[2013] 8 S.C.R. 413

S.P. MALHOTRA

v.

PUNJAB NATIONAL BANK & ORS.
(Civil Appeal No.5128 of 2013)

JULY 4, 2013

[DR. B.S. CHAUHAN AND S.A. BOBDE, JJ.]

Service Law – Disciplinary enquiry – Enquiry officer exonerated the delinquent officer of all the charges – Disciplinary authority partially disagreed with the findings – Imposed punishment of dismissal from service – Departmental appeal as well as review dismissed – Writ petition allowed by Single Judge of High Court holding that the punishment was vitiated – Division Bench of High Court, set aside the order of Single Judge – On appeal, held: Where the disciplinary authority disagrees with the Enquiry Officer, he must record reasons for his disagreement and communicate the same to the delinquent and should pass an order of punishment only after considering delinquent's explanation – In the present case, since such a course was not adopted, hence the punishment stood vitiated – Appeal allowed.

Punjab National Bank and Ors. vs. Kunj Behari Misra AIR 1998 SC 2713; 1998 (1) Suppl. SCR 22; Institute of Chartered Accountants of India vs. L.K. Ratna AIR 1987 SC 71; 1986 (3) SCR 1048; Yoginath D. Bagde vs. State of Maharashtra and Anr. AIR 1999 SC 3734; 1999 (2) Suppl. SCR 490; State Bank of India and Ors. vs. K.P. Narayanan Kutty AIR 2003 SC 1100; 2003 (1) SCR 391; J.A. Naiksatam vs. Prothonotary and Senior Master, High Court of Bombay and Ors. AIR 2005 SC 1218; 2004 (5) Suppl. SCR 287; P.D. Agrawal vs. State Bank of India and Ors. AIR 2006 SC 2064; 2006 (1) Suppl. SCR 454; Ranjit Singh vs. Union of India

A *and Ors. AIR 2006 SC 3685: 2006 (3) SCR 885; Canara Bank and Ors. vs. Shri Debasis Das and Ors. AIR 2003 SC 2041: 2003 (2) SCR 968 – relied on.*

B *Managing Director, ECIL, Hyderabad, etc.etc. vs. B. Karunakar etc.etc. AIR 1994 SC 1074: 1993 (2) Suppl. SCR 576 – referred to.*

Case Law Reference:

	1993 (2) Suppl. SCR 576	referred to	Para 3H
C	1998 (1) Suppl. SCR 22	relied on	Para 4
	1986 (3) SCR 1048	relied on	Para 7
	1999 (2) Suppl. SCR 490	relied on	Para 9
D	2003 (1) SCR 391	relied on	Para 9
	2004 (5) Suppl. SCR 287	relied on	Para 9
	2006 (1) Suppl. SCR 454	relied on	Para 9
E	2006 (3) SCR 885	relied on	Para 9
	2003 (2) SCR 968	relied on	Para 10

CIVIL APPEALTE JURISDICTION: Civil Appeal No. 5128 of 2013.

F From the Judgment and Order dated 25.09.2012 of the High Court of Punjab & Haryana at Chandigarh in L.P.A. No. 2028 of 2011.

P.S. Patwalia, Ashok K. Mahajan the Appellant.

G Rajesh Kumar, Anupam Dhurve, Yashraj Singh Deora, Mitter & Mitter Co. for the Respondents.

The following Order of the Court was delivered by:

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ORDER

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1. Leave granted.

2. This appeal has been preferred against the impugned judgment and order dated 25.9.2012 passed by the High Court of Punjab and Haryana at Chandigarh in L.P.A.No. 2028 of 2011, by way of which it has reversed the judgment and order of the learned Single Judge dated 20.5.2011 passed in Writ Petition No. 1201 of 1988, by which and whereunder the learned Single Judge had awarded the relief to the appellant herein on the ground that in case the Disciplinary Authority does not agree with the findings recorded by the Enquiry Officer in disciplinary proceedings, the Disciplinary Authority must record reasons for disagreement and communicate the same to the delinquent and seek his response and only after considering the same, he could pass the order of punishment.

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3. Facts and circumstances giving rise to this appeal are that:

A. The appellant was appointed as Clerk/Cashier in the respondent Bank in the year 1969 and was promoted as Accountant in the year 1977, and further promoted as Assistant Manager in the year 1981. The Disciplinary Authority put him under suspension in November, 1982 for certain delinquencies and in respect of the same, a chargesheet dated 7.2.1983 was served upon him containing four charges namely:

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- (i) Tampering with official record to the detriment of the Bank's interest;
- (ii) Indulging in un-authorized business against the interest of the Bank;
- (iii) Mis-utilising official position to benefit relatives and friends against the interest of the Bank; and
- (iv) Concealment of facts from the authorities.

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A B. The appellant submitted his reply to the said charges in July, 1983 denying all the allegations and further submitting that it was the Branch Manager who had sanctioned all the loans and advances and all the entries had been made at his behest. As the Disciplinary Authority was not satisfied with the
B reply submitted by the appellant, an Enquiry Officer was appointed to examine the charges.

C. After conducting and concluding the enquiry, the Enquiry Officer submitted report dated 27.2.1985 exonerating the
C appellant on all the charges and in support of the findings sufficient reasons had been given on each charge.

D. The Disciplinary Authority partly agreed with the findings on charge Nos. (ii) and (iii), but disagreed with the findings qua charge Nos. (i) and (iv), and vide order dated 27.4.1985
D imposed the punishment of dismissal from service.

E. Aggrieved, the appellant preferred the appeal against the said order under Regulation 17 of the Punjab National Bank Officers/Employees (Discipline and Appeal) Regulation 1977 (hereinafter referred to as the 'Regulations'), and the appeal
E was dismissed vide order dated 14.8.1985 by the Appellate Authority. The Appellate Authority also concurred with the findings on two charges recorded by the Enquiry Officer.

F. Being aggrieved of the order of the Appellate Authority, the appellant filed review petition under Regulation 18 of the Regulations and the said review petition was also dismissed
F vide order dated 19.8.1987.

G. The appellant challenged the said orders of punishment by filing a Writ Petition No. 1201 of 1988 before the High Court of Punjab and Haryana at Chandigarh. The said writ petition was contested by the respondent Bank. The learned Single Judge allowed the said writ petition vide judgment and order dated 20.5.2011, holding that in case the Disciplinary Authority
G disagrees with the findings recorded by the Enquiry Officer, he
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must record reasons for the dis-agreement and communicate the same to the delinquent seeking his explanation and after considering the same, the punishment could be passed. In the instant case, as such a course had not been resorted to, the punishment order stood vitiated.

H. Aggrieved, the respondent Bank preferred LPA before the Division Bench which has been allowed taking a view that as the punishment had been imposed prior to the date of judgment in *Managing Director, ECIL, Hyderabad, etc.etc. v. B. Karunakar etc.etc.*, AIR 1994 SC 1074, i.e. 20.11.1990, and as there was no requirement of issuing a second show cause notice before the punishment was imposed, the question of serving the copy of the reasons recorded for dis-agreement to the delinquent would not arise.

Hence, this appeal.

4. Mr. P.S. Patwalia, learned senior counsel appearing for the appellants has submitted that the Division Bench has not examined the case in correct perspective and failed to appreciate that the judgment in *ECIL* (supra) had no application in the instant case. The matter was squarely covered by the judgment of this court in *Punjab National Bank & Ors. v. Kunj Behari Misra*, AIR 1998 SC 2713, and the ratio thereof had correctly been applied by the learned Single Judge. Thus, the appeal deserves to be allowed.

5. Per contra, Mr. Rajesh Kumar, learned counsel appearing for the respondent Bank has defended the judgment of the Division Bench contending that there was no requirement of serving the recorded reasons for dis-agreement by the Disciplinary Authority to the delinquent if such a decision was taken prior to the date of decision of *ECIL* (supra) i.e. 20.11.1990, and therefore, no interference is required in the appeal.

6. We have considered the rival submissions made by

A learned counsel for the parties and perused the record.

B 7. In view of the rival submissions made by the learned counsel for the parties, two separate issues are involved in the instant case, namely, (a) requirement of issuing a second show cause notice by the Disciplinary Authority to the delinquent before imposing the punishment; and (b) serving the copy of the reasons recorded by the Disciplinary Authority disagreeing with the findings recorded by the Enquiry Officer.

C In the case of *ECIL* (supra), only the first issue was involved and in the facts of this case, only second issue was involved. The second issue was examined and decided by a three-Judge Bench of this Court in *Kunj Behari Misra* (supra), wherein the judgment of *ECIL* (supra) has not only been referred to, but extensively quoted, and it has clearly been stipulated that D wherein the second issue is involved, the order of punishment would stand vitiated in case the reasons so recorded by the Disciplinary Authority for disagreement with the Enquiry Officer had not been supplied to the delinquent and his explanation had not been sought. While deciding the said case, the court relied E upon the earlier judgment of this court in *Institute of Chartered Accountants of India v. L.K. Ratna*, AIR 1987 SC 71.

F 8. *Kunj Behari Misra* (supra) itself was the case where the Disciplinary Authority disagreed with the findings recorded by the Enquiry Officer on 12.12.1983 and passed the order on 15.12.1983 imposing the punishment, and immediately thereafter, the delinquent officers therein stood superannuated on 31.12.1983. In *Kunj Behari Misra* (supra), this court held as under:

G **“19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative**

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reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.” (Emphasis added)

The Court further held as under:

“21. Both the respondents superannuated on 31-12-1983. During the pendency of these appeals, Misra died on 6-1-1995 and his legal representatives were brought on record. More than 14 years have elapsed since the delinquent officers had superannuated. It will, therefore, not be in the interest of justice that at this stage the cases should be remanded to the disciplinary authority for the start of another innings.”

9. The view taken by this Court in the aforesaid case has consistently been approved and followed as is evident from the judgments in *Yoginath D. Bagde v. State of Maharashtra & Anr.*, AIR 1999 SC 3734; *State Bank of India & Ors. v. K.P. Narayanan Kutty*, AIR 2003 SC 1100; *J.A. Naiksatam v. Prothonotary and Senior Master, High Court of Bombay & Ors.*, AIR 2005 SC 1218; *P.D. Agrawal v. State Bank of India & Ors.*, AIR 2006 SC 2064; and *Ranjit Singh v. Union of India & Ors.*, AIR 2006 SC 3685.

10. In *Canara Bank & Ors. v. Shri Debasis Das & Ors.*, AIR 2003 SC 2041, this Court explained the ratio of the judgment in *Kunj Behari Misra* (supra), observing that it was a

A case where the disciplinary authority differed from the view of the Inquiry Officer. "In that context, it was held that denial of opportunity of hearing was *per se* violative of the principles of natural justice."

B 11. In fact, not furnishing the copy of the recorded reasons for disagreement from the enquiry report itself causes the prejudice to the delinquent and therefore, it has to be understood in an entirely different context than that of the issue involved in *ECIL* (supra).

C 12. The learned Single Judge has concluded the case observing as under:

D "The whole process that resulted in dismissal of the petitioner is flawed from his inception and the order of dismissal cannot be sustained. I am examining this case after nearly 23 years after its institution and the petitioner has also attained the age of superannuation. The issue of reinstatement or giving him the benefit of his wages for during the time when he did not serve will not be appropriate. The impugned orders of dismissal are set
E aside and the petitioner shall be taken to have retired on the date when he would have superannuated and all the terminal benefits shall be worked out and paid to him in 12 weeks on such basis. There shall be, however, no
F direction for payment of any salary for the period when he did not work."

G 13. As the case is squarely covered by the judgment of this court in *Kunj Behari Misra* (supra), we do not see any reason to approve the impugned judgment rendered by the Division Bench.

Thus, in view of the above, the appeal is allowed. The judgment and order of the Division Bench is set aside and that of the learned Single Judge is restored. No costs.

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Appeal allowed.