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HEERA PRASAD

v.

STATE BANK OF INDIA AND OTHERS

MARCH 2, 1993

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[J.S. VERMA AND S.P. BHARUCHA, JJ.]

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Constitution of India, 1950: Article 136—Appeal—Service—Disciplinary proceeding—Bank employee—Dismissal from service on the basis of enquiry report challenged before High Court—High Court's order dated 8.7.1988 contemplating fresh enquiry—"Additional enquiry report" made by Enquiry Officer—Whether there was application of mind—Supreme Court's direction to appoint another Enquiry Officer prescribing his duties.

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The respondent-bank charge-sheeted the appellant-employee for granting bank loans to a large number of persons without proper documentation and without verifying their credit-worthiness and obtaining illegal gratification in that connection.

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An enquiry was held. The Enquiry Officer found the appellant guilty and on the basis of the enquiry report, he was dismissed from service.

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The appellant challenged the order of dismissal in a writ petition before the High Court.

On 8.7.1988 the High Court allowed the petition holding that the enquiry held was not proper and in accordance with law and ordered the appellant to face another enquiry in respect of which it gave certain directions.

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The same enquiry Officer then permitted the appellant to cross-examine the witnesses of the bank and to examine his own witnesses.

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The Enquiry Officer held in his report dated 27.3.1989 that nine charges against the appellant were found to be proved, one not proved and one partly proved.

The disciplinary authority, considering the enquiry report, dismissed the appellant from service on 23.10.1989.

The appellant challenged the dismissal order in the High Court contending that the enquiry was not conducted as required by the order of the High Court dated 8.7.1988 and that he was not furnished with a copy of the Enquiry Report. A

The High Court dismissed the writ petition, against which the present appeal by special leave was filed. B

The appellant contended that the Enquiry Officer in the second enquiry report had relied upon the findings of the earlier enquiry, since quashed, and that he did not permit the appellant to examine three necessary witnesses in support of his case; that there was no real enquiry as contemplated by the High Court's order dated 8.7.1988; and that, therefore, the dismissal order passed on the basis of the second enquiry report be quashed. C

The respondent-bank submitted that the Enquiry Officer conducted the enquiry as directed by the High Court in its order dated 8.7.1988. D

Allowing the appeal, this Court,

HELD : 1.01. The order dated 8th July, 1988 contemplated a fresh enquiry. At best, the examination-in-chief of the witnesses of the respondent could be said to have been allowed to be incorporated in the second enquiry proceedings. The order certainly contemplated that the Enquiry Officer would apply his mind afresh to the evidence on record, comprising the examination-in-chief and cross-examination of the respondent's witnesses and that of the appellant's witnesses. [165C] E

1.02. It was patent from the "Additional enquiry report" made by the Enquiry Officer that there had been no fresh application of mind. It was impermissible for the Enquiry Officer, in these circumstances, to have borne his previous Enquiry Report in mind and to have confined the "Additional enquiry report" only to the cross-examination of prosecution witnesses and the examination and cross-examination of defence witnesses "as the charges have been dealt with one by one in detail in my previous enquiry report". It was also impermissible for him to have stated that "the findings of the previous enquiry report remain as they are". Having regard to the High Court's order dated 8th July, 1988, the Enquiry Officer was bound to consider the material on record afresh and not to take his earlier F
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A report into account and to say that he found "no reason to change that report". [165C-E]

1.03. In the fitness of things it was directed that another Enquiry Officer should be appointed by the respondent who should allow the appellant the opportunity of examining as his witnesses the three persons referred to by the earlier Enquiry Officer in the paragraph of the "Additional enquiry report" sub-titled "Conclusion". He should give to the respondent and the appellant the opportunity of a hearing. He should then apply his mind to the material on record without in any way being influenced by the earlier enquiry reports, and make his own enquiry report accordingly. [165G-H, 166A]

Union of India and Others v. Mohd. Ramzan Khan, AIR 1991 SC 471, referred to. [163G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 901 of 1993.

From the Judgment and Order dated 15.11.91 of the Patna High Court in C.W.J.C. No. 3430 of 1991.

A. Sharan for the Appellant.

G. Ramaswamy and A.V. Rangam for the Respondents.

The Judgment of the Court was delivered by

BHARUCHA, J. Leave to appeal is granted.

The appeal is directed against the judgment and order of the High Court at Patna dismissing the writ petition filed by the appellant.

The appellant was employed by the respondent. He was charge-sheeted for having granted bank loans to a large number of persons without proper documentation and without verifying their creditworthiness and also with having obtained illegal gratification in that connection. An enquiry was held. The Enquiry Officer made a report holding the appellant guilty. Upon the basis of the enquiry report the appellant was dismissed from service.

The appellant filed a writ petition before the High Court at Patna (being Writ Petition No. C.W.J.C. No. 1979 of 1988) impugning the dis-

missal. The High Court allowed the writ petition by judgment and order dated 8th July, 1988. The enquiry, the court concluded, could not be held to be proper and in accordance with law. Consequently, the order of dismissal was set aside. The High Court observed :

"This does not mean that the petitioner should be got scot free. He must face enquiry. Sufficient time has already lapsed. The enquiry must be concluded as early as possible. The petitioner will appear before the Enquiring Officer (to be nominated in the meantime) at Patna on 2nd August, 1988 and the prosecution will produce the witnesses examined on his behalf for cross-examination. After the cross-examination is over the petitioner will also produce the witnesses when he may like to enquire. This should be done without any adjournment and the proceeding should be conducted day to day so that it may be concluded as early as possible. With this observation this writ application is disposed of."

The same Enquiry Officer then permitted the appellant to cross examine the witnesses produced in support of the charge and to examine his own witnesses. He made a reprot dated 27th March, 1989 in which he held nine charges against the appellant to be proved, one to be partly proved and one not proved. The disciplinary authority, upon consideration of the enquiry report, passed an order dated 23rd October, 1989, dismissing the appellant from service.

The appellant challenged the order of dismissal dated 23rd October, 1989 on the ground that the enquiry upon the basis of which it had been passed had not been conducted as required by the order of the High Court dated 8th July, 1988. He also challenged it upon the ground that he had not been furnished with a copy of the Enquiry Report. The High Court rejected the writ petition. It held that the judgment of this Court in the case of *Union of India and others v. Mohd. Ramzan Khan*, A.I.R. 1991 S.C. 471, did not cover an order of dismissal that had been passed before the said judgment was delivered. Insofar as the enquiry report was concerned, the High Court took the view that the Enquiry Officer had allowed the appellant to participate in the proceedings as also to cross-examine witnesses and he had considered all relevant aspects on the record.

A It will be recalled that the High Court by the judgment and order
dated 8th July, 1988 had held that the earlier enquiry was not proper and
in accordance with law and had quashed the order of dismissal dated 14th
B February, 1987 based thereon. It had directed that the appellant should
face an enquiry whereat the prosecution would produce the witnesses it
had examined on its behalf for cross-examination by the appellant. There-
after, the appellant could produce such witnesses as he desired. It is the
submission of learned counsel on behalf of the appellant that the Enquiry
Officer had in the second enquiry report relied upon the findings of the
earlier enquiry, since quashed, and that he had not permitted the appellant
to examine three necessary witnesses in support of his case. There had,
C therefore, been no real enquiry as contemplated by the High Court's order
dated 8th July, 1988 and that, therefore, the dismissal order passed upon
the basis of the second enquiry report should be quashed.

D Shri G. Ramaswamy, learner senior counsel for the respondent,
submitted that the Enquiry Officer had conducted the enquiry as directed
by the High Court in its order dated 8th July, 1988, from the point of
cross-examination of the respondent's witnesses onward.

E The enquiry report made by the Enquiry Officer subsequent to the
order of the High Court dated 8th July, 1988 is entitled "*Additional enquiry
report in respect of charges laid against Shri Heera Prasad*". It opens with
the sentence, "*This enquiry report is further to the enquiry report already
submitted by me in September 1986*". It says that "the enquiry was
reopened". It says, further, "*As the charges have been dealt with one by one
in detail in my previous enquiry report I am confining this report only to the
F cross examination of prosecution witnesses as also examination/cross ex-
amination of defence witnesses.*" The report concludes thus :

G "After going through the proceedings, hearing the deposi-
tions made by the defence witnesses, and hearing the
answers given by the prosecution witnesses, *I find no
reason to change my report* as no exonerating fact came
out during the enquiry instead it becomes a little darker
particularly noting the fact that at least three (03) of the
witnesses cited by the charged officer himself refused to
come for deposing before the enquiry for reasons best
known to the charged officer/witnesses. *As the various*
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exhibits etc. were discussed and analysed by me in my previous report, I am not repeating the analysis once again in this report."

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As aforesaid, the Enquiry Officer held nine of the eleven charges to be proved, one to be partly proved and one to be not proved. (The Emphasis is supplied).

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It is patent that the order dated 8th July, 1988 contemplated a fresh enquiry. At best, the examination-in-chief of the witnesses of the respondent could be said to have been allowed to be incorporated in the second enquiry proceedings. The order certainly contemplated that the Enquiry Officer would apply his mind afresh to the evidence on record comprising the examination-in-chief and cross-examination of the respondent's witnesses and that of the appellant's witnesses. It is patent from the "Additional enquiry report" made by the Enquiry Officer that there has been no fresh application of mind. It was impermissible for the Enquiry Officer, in these circumstances, to have borne his previous Enquiry Report in mind and to have confined the "Additional enquiry report" only to the cross-examination of prosecution witnesses and the examination and cross-examination of defence witnesses "as the charges have been dealt with one by one in detail in my previous enquiry report". It was also impermissible for him to have stated that "the findings of the previous enquiry report remain as they are". Having regard to the High Court's order dated 8th July, 1988, the Enquiry Officer was bound to consider the material on record afresh and not to take his earlier report into account and to say that he found "no reason to change that report".

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We are, in the circumstances, not satisfied that the appellant has had a fair opportunity of presenting his case to an Enquiry Officer unbiased by pre-conceptions.

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Having regard to all that has transpired, we think that it is in the fitness of things that the order of dismissal dated 23rd October, 1989 should be quashed and another Enquiry Officer should be appointed by the respondent who should allow the appellant the opportunity of examining as his witnesses the three persons referred to by the earlier Enquiry Officer in the paragraph of the "Additional enquiry report" sub-titled "Conclusion". He should give to the respondent and the appellant the opportunity of a hearing. He should then apply his mind to the material

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- A on record without in any way being influenced by the earlier enquiry reports, and make his own enquiry report accordingly.

In the result, the appeal is allowed. The judgment and order under appeal are set aside. The writ petition is allowed to the extent mentioned in the preceding paragraph.

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There shall be no order as to costs.

V.P.R.

Appeal allowed.