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T.Ravi Vs. the General Manager

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Court : Kerala

Decided On : Jan-31-2013

Judge : Hon'Ble the Chief Justice Mrs. Manjula Chellur

Appellant : T.Ravi

Respondent : The General Manager

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HON'BLE THE CHIEF JUSTICE MRS. MANJULA CHELLUR & THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN THURSDAY, THE 31ST DAY OF JANUARY 2013 11TH MAGHA 193 WA.No. 2212 of 2012 () IN WP(C).111/2006 -- AGAINST THE ORDER/JUDGMENT IN WP(C).111/2006 of HIGH COURT OF KERALA DATED 01 02-2012 APPELLANT(S): ------------- T.RAVI, FORMER MANAGER - OFFICER MMGS III STATE BANK OFINDIA, COCHIN, ERNAKULAM RESIDING AT FLAT NO.5B, J.M.CASTLE, KALOOR KOCHI

017. BY ADVS.SRI.B.ASHOK SHENOY SMT.C.G.PREETHA SRI.K.V.GEORGE SRI.P.N.RAJAGOPALAN NAIR SRI.THOMAS P.MAKIL RESPONDENT(S): -------------- 1. THE GENERAL MANAGER, NORTH KERALA, APPOINTING AUTHORITY STATE BANK OF INDIA, LOCAL HEAD OFFICE, S.S.KOVIL ROAD THIRUVANANTHAPURAM

001.

2. K.R.PALEKAR, ENQUIRY OFFICER, DEPUTY GENERAL MANAGER STATE BANK OF INDIA, LOCAL HEAD OFFICE THIRUVANTHAPURAM

001.

3. THE CHIEF GENERAL MANAGER, STATE BANK OF INDIA (KERALA CIRCLE)LOCAL HEAD OFFICE THIRUVANANTHAPURAM

001. 4. THE CHIEF VIGILANCE COMMISSIONER, CENTRAL VIGILANCE COMMISSION, SATARKTA BHAVAN G.P.O. COMPLEX INA, NEW DELHI

023. R4 BY SRI.P.PARAMESWARAN NAIR,ASG OF INDIA R3 BY SRI.P.GOPAL THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 31-01-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: MANJULA CHELLUR, C.J & K.VINOD CHANDRAN, J.

-- W.A.No. 2212 of 2012 -- Dated this the 31st day of January, 2013 JUDGMENT Vinod Chandran, J.

The appellant, a former Branch Manger of the State Bank of India, challenges the judgment of the learned single Judge approving the order of the disciplinary authority finding the appellant guilty of some of the misconducts alleged against him and imposing penalty; the latter of which alone was modified in appeal. In exercising judicial review, especially, on the appellate jurisdiction, we do not see any reason to go into the individual charges levelled against the appellant and the efficacy of the evidence led before the inquiry officer and subsequently accepted by the disciplinary authority. Suffice it to say, the disciplinary authority found that eighteen misconducts charged against the appellant were fully proved and three of them partially. The disciplinary authority, by Exhibit P4 order, imposed the punishment of dismissal from service, which was later modified by the appellate authority to that of removal from service. WA.2212/1

2. The appellant, before the learned single Judge and also before us, urged four material procedural defects as having vitiated the enquiry, the conclusion arrived at by the disciplinary authority and the penalty imposed. The four procedural irregularities urged before us are that of (i) non-supply of the preliminary inquiry report, (ii) non compliance of Rule 68(2)(xvii) of the State Bank of India Officers Service Rules, (iii) non furnishing of the inquiry report, before, the disciplinary authority agreed with the findings of the inquiry officer and (iv) the illegality in the disciplinary authority having obtained the recommendations of the Central Vigilance Commissioner (for short, 'CVC'), which presumably influenced the disciplinary authority. The learned single Judge has dealt with each of these contentions in sequence and we also propose to take the same path in deciding whether the findings of the learned single Judge are sustainable.

3. The non supply of the preliminary inquiry report has to be looked at in the perspective of whether such report or the findings thereon were relied on in the disciplinary inquiry against the delinquent employee/appellant. Undisputedly, such an inquiry WA.2212/12 3 report was not one of the documents produced or relied on in the inquiry. On going through the records, we are unable to find any relevance given to such a preliminary inquiry report. The documents recovered on such preliminary investigation were supplied to the appellant. The preliminary inquiry hence was to only ascertain about the various irregularities and determine whether on that basis the appellant could be said to have committed the offences for which he has been charge sheeted. The further contention is that the material recovered and the findings thereon would exonerate the appellant from the charges levelled against him. The preliminary inquiry conducted was only with respect to the allegations levelled against the appellant and the materials recovered as noticed above were produced in the subsequent departmental inquiry. The findings having not been relied upon; the non-supply of such report is not material. In fact, but for the assertion of the appellant there is nothing to show that there was in existence a preliminary inquiry report with findings thereon. The claim of prejudice on the ground of non supply of the preliminary inquiry report, as was noticed by the learned single Judge, is only an afterthought, since it was not pleaded or proved. WA.2212/12 4 The finding of the learned single Judge that the non supply of the report if at all it exists, has not prejudiced the appellant's defence

in any manner, since no such findings were relied on in the inquiry; according to us, is perfectly in order.

4. The contention with respect to non compliance of Rule 68 (2)(xvii) of the State Bank of India Officers Service Rules is urged placing reliance on Ministry of Finance and Another v. S.B.Ramesh [(1998)3 SCC 227). The learned counsel would urge that Rule 68(2)(xvii) of the State Bank of India Officers Service Rules mandates that the inquiring authority should question the delinquent officer generally on the circumstances appearing against him, in the evidence, for the purpose of enabling the delinquent officer to explain the circumstances pitted against him; if the officer has not got himself examined. On behalf of the appellant, it is contended that the said Rule is similar to Rule 14 (18) of the Central Civil Services (Classification, Control and Appeal), Rules, 1965, which was considered by the Honourable Supreme Court in the above cited decision. We notice the facts of the said decision, which reveal, that it was a case in which the delinquent officer remained ex-parte. We again notice that, that WA.2212/12 5 was a case in which the records contained only the judgment of the Tribunal, apart from the Special Leave Petition and the counter affidavit filed by the appellant before the Tribunal; and the failure to file a comprehensive paper book was specifically noticed and deprecated by the Honourable Judges of the Supreme Court. In the constraints noticed above, the Honourable Judges quoted extensively from the order of the Tribunal. The order of the Tribunal also indicates that it had held that "when the inquiry was held for recording the evidence in support of the charge, even if the inquiry officer had set the applicant ex-parte and recorded the evidence, he should have adjourned the hearing to another date to enable the applicant to participate in the enquiry hereafter/or even if the inquiry authority did not choose to give the applicant an opportunity to cross examine the witness examined in support of the charge, he should have given an opportunity to the applicant to appear and then proceeded to question him under sub-rule (18) of Rule 14 of CCS (CCA) Rules". (sic) 5. True, the Honourable Judges, on a careful perusal of the findings of the Tribunal, thought that there was no case for WA.2212/12 6 interference, but particularly in the absence of full materials before them. The Honourable Supreme Court had declined interference particularly due to the non-availability of materials. The judgment in a Civil Appeal passed by the Honourable Supreme Court

confirming the orders of the High Court or a Tribunal would amount to declaration of law by the Supreme Court under Section 141 of the Constitution of India as has been held in Kunhayammed v. State of Kerala [(2000)6 SCC 359]. But in this case, we have specifically noticed that it was on the facts of that case that the Tribunal held that the enquiry was vitiated. In the instant case the appellant/petitioner fully participated in the enquiry and has no complaint of being not allowed to adduce evidence, but contends that the enquiry is vitiated on the ground of non-questioning of the delinquent employee alone under Rule 68(2)(xvii) of the State Bank of India Officers Service Rules.

6. Even looking at Rule 68(2)(xvii) of the State Bank of India Officers Service Rules, we cannot find that it is a mandate on the inquiring authority. The Rule stipulates that "the inquiring authority may....", which confers the discretion on the inquiring WA.2212/12 7 authority and apparently it is an enabling provision clothing the inquiring authority with the power to question the delinquent officer on the general circumstances appearing in the evidence, which are likely to lead to an adverse finding. Here is a case where the delinquent employee, who had participated in the inquiry, was supplied with the entire documents relied on in the inquiry, who cross-examined the witnesses and was also given an opportunity to examine himself; the latter of which he failed to avail of.

7. Examining himself definitely would put him to the rigor of cross-examination by the representative of the employer and he cannot be found fault with, for not having chosen to enter the box voluntarily. The appellant however, is unable to show any prejudice that was caused to him, by the inquiring authority not having resorted to the procedure contemplated in the said Rule. We are fortified in this view by the decision of the Honourable Supreme Court in Sunil Kumar v. State of W.B [(1980)3 SCC 304], wherein it was held that the failure to comply with the requirements of a Rule, which was akin to Section 313 of the Code of Criminal Procedure does not vitiate an enquiry unless the WA.2212/12 8 delinquent officer is able to establish prejudice. The learned single Judge has extracted paragraph 3 of the judgment and has also noticed that the same being a three Judge Bench decision prevails over S.B.Ramesh' case (Supra). Concurring with the findings of the learned single Judge, we are unable to find any prejudice caused to the

appellant by reason of the inquiring authority having not questioned him. This is in addition to our finding that the rule does not postulate an unavoidable mandate, the absence of which would vitiate the entire inquiry. The appellant also does not have a case that he was not given an opportunity to offer his explanations either orally or in writing.

8. With reference to the contention that the disciplinary authority having not given an opportunity for submitting his explanation against the findings of the inquiry officer, we have to state immediately that the same is not evident from the records. The exhibits produced by the appellant in the Writ Petition would show that Exhibit P2 was the covering letter and the inquiry report and Exhibit P3 was the explanation offered to the disciplinary authority against the findings in the inquiry report. Apparently, after inquiry report was received by the disciplinary WA.2212/12 9 authority, the same was forwarded to the delinquent officer/appellant for his explanation. The covering letter discloses that the appellant was called upon to make submissions with respect to the findings on the inquiry report.

9. We are of the opinion that the procedure followed is perfectly in consonance with the guidelines, Exhibit P5, issued by the Bank; which is in consonance with the law laid down on supply of inquiry report. Exhibit P5 guideline stipulate that if the inquiry report finds all charges proved, then copy should be supplied and the disciplinary authority must take its decision. When some of the charges are not proved or partly proved, then the disciplinary authority must consider the report and if he has difference of opinion with the inquiry officer, that should also be communicated before arriving at a finding. This is precisely what the law indicates as to informing the delinquent of the findings on the alleged charges; especially when the law provides for the disciplinary authority to differ from the inquiry officer's report. In the instant case, while some charges were proved, others were partly proved. The disciplinary authority looked into the report and communicated his prima facie concurrence with the findings in the report, by WA.2212/12 10 Exhibit P2.

10. In Managing Director, ECIL v. B.Karunakar [(1993)4 SCC 727.the Honourable Supreme Court held that by the 42nd amendment, though the opportunity to represent against a penalty is effaced, such an opportunity to explain against the enquiry officer's findings still remains mandatory. Hence, a disciplinary authority necessarily cannot accept the inquiry officer's findings without looking into the explanation offered by the delinquent employee. In effect, the two opportunities available were fused into one. Thus, the disciplinary authority has to necessarily supply a copy of the inquiry report and call for explanation from the delinquent employee. Here that was done by Exhibit P2 covering letter, wherein there was a prima facie finding and a penalty too was proposed. That is not to say that the disciplinary authority accepted the findings of the inquiry officer before hearing the appellant. That is in consonance with Exhibit P5 guidelines.

11. The law laid down in B.Karunakar's case (Supra) was put in the proper perspective in State Bank of Patiala v. S.K.Sharma [(1996)3 SCC 364], in paragraph 25, which reads as WA.2212/12 11 under: "25. In Managing Director, ECIL v. B.Karunakar, a Constitution Bench did take the view that before an employee is punished in a disciplinary enquiry, a copy of the enquiry report should be furnished to him (i.e. wherever an enquiry officer is appointed and he submits a report to the Disciplinary Authority). It was held that not furnishing the report amounts to denial of natural justice. At the same time, it was held that just because it is shown that a copy of the enquiry officer's report is not furnished, the punishment ought not to be set aside as a matter of course. It was directed that in such cases, a copy of the report should be furnished to the delinquent officer and his comments obtained in that behalf and that the court should interfere with the punishment order only if it is satisfied that there has been a failure of justice. The following para (applicable in cases where the order of punishment is subsequent to 20.11.1990, the date of judgment in Union of India v. Mohd. Ramzan Khan is apposite: (SCC p.758, para 31). "Hence, in all cases where the enquiry officer's report is not furnished to the WA.2212/12 12 delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If

after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to WA.2212/12 13 the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report." 12. Exhibit P4 is the final order, which was passed after receiving the explanations of the delinquent officer about the findings of the inquiring authority. The disciplinary authority also has listed out each of the charges and after giving reasons concluded that the findings of the inquiry officer with respect to eighteen charges were proved in full and three of them in part. It was on this finding that the imposition of penalty of dismissal from service was ordered by the disciplinary authority, which, as noticed earlier, was modified as removal from service, in appeal. We do not find any force in the contention that the disciplinary authority accepted the findings of the inquiring authority even before hearing the explanation of the delinquent employee. WA.2212/1

13. The last allegation is with respect to the recommendation of the CVC, which the appellant presumes to have influenced the disciplinary authority. The learned counsel relies on State Bank of India v. D.C.Aggarwal [(1993)1 SCC 13]. We have gone through the above decision and it is disclosed that; in the said case, after the inquiry proceedings, the inquiry officer was directed by the disciplinary authority to submit the report to the CVC, which the Honourable Supreme Court found to be

not supported by any provision, sanctioning such procedure. The CVC in the said case examined the inquiry report and recorded its own findings on each of the charges and sent its recommendation running to 150 pages to the Bank. The CVC disagreed with the inquiry officer and found certain charges to be proved, despite the inquiry officer's findings to the contrary. The inquiry report and the recommendations were considered by the disciplinary authority and while agreeing with the findings on charges, the quantum of punishment was reduced from the one suggested by the CVC. While the delinquent employee before the Honourable Supreme Court contended that the order is vitiated for reason of mechanical exercise of power by the disciplinary WA.2212/12 15 authority, the Honourable Judges refused to accept the same. But, however, held the final order to be vitiated for reason of relying on material which was irrelevant and could not have been looked into; meaning the report of the CVC. The Honourable Judges found it significant that the CVC recommendation was not supplied to the delinquent employee. The CVC having made the recommendation behind the back of the respondents and the disciplinary authority having examined and relied on the specific findings of the CVC on the charges, the exercise was held to be violative of procedural safeguards and contrary to fair and just inquiry. In the said case, the very basis of the order of the disciplinary authority was the CVC recommendation.

14. We are unable to find any such recommendation of the CVC in the instant case. The CVC recommendation was only with respect to the penalty and it was confined to the recommendation of "suitable stiff major penalty". No penalty as such was also proposed or recommended by the CVC. The learned Single Judge also extracted the concluding portion of Exhibit P4 order of punishment to hold that the recommendation of the CVC was not even referred to in the order passed by the disciplinary authority. WA.2212/12 16 Going through Exhibit P4 order, we also cannot find any reliance placed on the CVC recommendation with respect to the charges or the punishment imposed. The learned Single Judge rightly garnered support from the decision in State Bank of India and others v. S.N.Goyal [(2008)8 SCC 92.to arrive at the said finding. Having found no merit in the contention of procedural irregularity, on any count canvassed by the appellant before us, we are unable to find any irregularity or infirmity, to interfere with the judgment of the learned Single Judge which upheld the findings of the disciplinary authority as

modified by the appellate authority. We find the appeal to be devoid of merit. Accordingly, the Writ Appeal is dismissed, however, without any order as to costs. MANJULA CHELLUR, CHIEF JUSTICE K.VINOD CHANDRAN, JUDGE vgs

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