

Bairy and anr. Vs. General Manager

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Court : Karnataka

Decided On : Dec-02-1998

Reported in : ILR1999KAR2889; (1999)IIILLJ1383Kant

Judge : V. Gopala Gowda, J.

Appeal No. : W.P. Nos. 19762 and 19903/1994

Appellant : Bairy and anr.

Respondent : General Manager

Advocate for Def. : T.R.K. Prasad, Adv.

Advocate for Pet/Ap. : P.S. Rajagopal, Adv.

Disposition : Petition allowed

Judgement :

ORDER

V. Gopala Gowda, J.

1. Since common facts, contentions urged and the law involved are common in these two writ petitions, they were heard together and disposed of by this common order.

2. In these two writ petitions the petitioners, who are the employees of respondent Canara Bank, have challenged the impugned orders at Annexure-H and K. In Annexure-H punishment of stoppage of increment for a period of two years with cumulative effect has been imposed on both the petitioners. Annexure-K. is the intimation furnished to the petitioners informing dismissal of the appeals filed by them against the impugned orders at Annexure-H and the order of the Appellate Authority are also enclosed thereto.

3. Elaborate statement of objections have been filed on behalf of the respondent Bank justifying the impugned orders.

4. Arguments have been advanced by the learned counsel on either side in support of their respective cases. Since the matters revolve round the justification or otherwise of the impugned orders, it is not necessary to advert to the contentions and the decisions relied upon by the learned Counsel for the parties.

5. It is an admitted fact that before accepting the findings of the enquiry officer, the disciplinary authority has not furnished the enquiry report and has not given an opportunity of hearing to the petitioners on the findings of the enquiry officer and therefore the law laid down by this Court in the case of *Ningaiiah v. Cauvery Gramin Bank* (1995-II-LLJ-389)(Kant) is applicable to the instant cases. In that decision it has been held that failure to furnish copy of enquiry report or an opportunity to question the findings violates the principles of natural justice. The reliance placed by the learned Counsel for the Bank on the decision of the Supreme Court in the case of *The Municipal Corporation of Greater Bombay v. P.S. Malvenkar* (1978-II-LLJ-168) (SC) has no application to the instant cases. That was a case where the draft order of termination was initialled by the disciplinary authority and it was communicated by the Executive Assistant. The Supreme Court held that the full signature or mere initial of the authority will not make any difference with regard to the authenticity of the document. In that case the effect of non-furnishing of enquiry report as to whether denial of opportunity to have the say of the delinquent on the findings of the enquiry officer would amount to violation of principles of natural justice were not considered and decided. Therefore, the reliance placed on the said decision is misconceived and it has no

application to the instant cases.

6. Annexure-C is the document produced in; both the Writ Petitions. It clearly shows that the disciplinary authority has agreed with the findings of the enquiry officer even before giving an opportunity of hearing to the petitioners. It is clear from this document that the disciplinary authority has pre-determined the case before hearing the petitioners. This is violative of principles of natural justice.

7. Annexure-G is the document which shows the personal hearing given to the petitioners. In that document it is seen that the disciplinary authority has put only three questions to the petitioners and those questions are:

- 1) Have you received my letter (Letter No. and date are furnished therein);
- 2) What have you got to say regarding the punishment considered as appropriate by me?
- 3) Have you got any more submissions to make?

For the first question the petitioners have admitted receipt of the letter. As regards the other

two questions, they have stated that they have submitted in writing. In the impugned orders at Annexure-H it is not adverted to the written submissions made by the petitioners. Mere facts are stated and thereafter it is merely stated that 'agreeing with the findings of the enquiry officer and taking into consideration submissions of the chargesheeted employee, the punishment is imposed'. There is no proper consideration of the matter in both the cases and there is total non-application of mind while passing the impugned orders. The impugned orders at Annexure-H are not speaking orders and therefore they are unsustainable in law.

8. It is also seen that the authority who gave the so-called personal hearing is different from the authority who has passed the impugned orders at Annexure-H. It is thus clear that the disciplinary authority has not given the personal hearing to the petitioners. On this ground also the said orders are bad.

9. As the impugned orders of the disciplinary authority cannot be sustained, the order passed by the appellate authority vide Annexure-K also cannot be sustained. They are also liable to be quashed.

10. For the reasons stated above, the writ petitions are allowed and the impugned orders at Annexures H and K in both the writ petitions are quashed. Liberty is reserved to the Bank to consider the matters afresh from the stage of enquiry reports submitted, if they are desired to do so. It is made clear that the legality, validity and correctness of the enquiry conducted is not gone into in these writ petitions.

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