

R. Samba Murthy Vs. the Chief General Manager, State Bank of India, Lho, Hyd. and ors.

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SooperKanoon Citation : sooperkanoon.com/439942

Court : Andhra Pradesh

Decided On : Jun-26-2002

Reported in : 2002(6)ALT733

Judge : L. Narasimha Reddy, J.

Acts : [State Bank of India Act, 1955](#) - Sections 43; State Bank of India Officers Service Rules - Rules 67, 68(2), 68(3), 69 and 69(2)

Appeal No. : W.P. No. 13201 of 1998

Appellant : R. Samba Murthy

Respondent : The Chief General Manager, State Bank of India, Lho, Hyd. and ors.

Advocate for Def. : K. Srinivasa Murthy, Adv.

Advocate for Pet/Ap. : Party in person

Disposition : Writ petition partly allowed

Judgement :

ORDER

L. Narasimha Reddy, J.

1. The petitioner was initially appointed as Clerk-cum-Typist in the State Bank of India, in the year 1973 and the same was confirmed in 1974. He was promoted as Trainee Officer on 1-8-1980 and confirmed in that post two years thereafter. On 1-8-1986, he was promoted as Manager Scale II and was posted at Payakaraopet branch, Visakhapatnam district.

2. While the petitioner was working at Payakaraopet branch, he was placed under suspension, through orders dated 31-7-1992, in contemplation of the initiation of disciplinary proceedings. He was issued a Charge Sheet dated 8-9-1993 wherein two charges were framed which related to the alleged irregularities in advancing certain loans in his capacity as Manager of the Payakaraopet branch. While Charge No.1 was split into 8 allegations dealing with various aspects of the irregularities said to have been committed by the petitioner in advancing loans, under Charge No.2, he was alleged to have accepted illegal gratification from the borrowers. The petitioner submitted his explanation dated 27-10-1993 denying the charges levelled against him.

3. An Enquiry Officer was appointed by the disciplinary authority to conduct enquiry into the charges levelled against the petitioner. The Enquiry Officer, in turn, submitted his report dated 25-7-1996 holding that Charge No.1 levelled against the petitioner is proved and that Charge No.2 is not proved.

4. Accepting the findings of the Enquiry Officer, the disciplinary authority forwarded the report of the Enquiry Officer, through letter dated 10-9-1996, requiring the petitioner to make submissions about the findings of the Enquiry Officer. The petitioner submitted his representation dated 18-10-1996. The disciplinary authority, on consideration of the representation dated 18-10-1996 of the petitioner vis--vis the findings of the Enquiry Officer, through his proceedings dated 6-3-1997, recommended to the appointing authority to impose penalty of removal from service on the petitioner. Accepting the recommendations of the disciplinary authority, the appointing authority passed orders dated 10-3-1997 directing removal of the petitioner from service.

5. The petitioner availed the remedy of appeal provided for under the State Bank of India Officers Service Rules (for short 'the Rules'). The appellate authority, the 3rd respondent herein, rejected the appeal through orders dated 29-1-1998. Hence, the present writ petition.

6. The contention of the petitioner is that the irregularities alleged against him were trivial in nature and were on account of the pressure of work and non-cooperation of the Field Officer. The petitioner alleges that the disciplinary proceedings are vitiated inasmuch as he was not furnished the report in the preliminary enquiry or the statement of witnesses that have been recorded before the issuance of charge sheet. It is also alleged that the Enquiry Officer held that Charge No.2, which contains very serious imputations, was not proved and once that be so, the punishment imposed upon him is too harsh and disproportionate. It is the further complaint of the petitioner that the appellate authority did not apply its mind and has not at all considered the various grounds raised before him and that it is a case of non application of mind.

7. The respondents filed a counter affidavit narrating the circumstances, which led to the initiation of disciplinary proceedings against the petitioner. They justified the non-furnishing of the preliminary report and certain other documents related thereto, on several grounds. So far as the contention of the petitioner, as regards the manner in which the appointing authority and the appellate authority passed orders, is concerned, the respondents submit that having regard to the contents of Charge No.1, the punishment imposed against the petitioner cannot be said to be too harsh and disproportionate.

8. The writ petition was heard on earlier occasion by one of my learned brother Judges. The contention of the petitioner that the disciplinary proceedings were vitiated on account of non-furnishing of the report in the preliminary enquiry was accepted and it was held that the enquiry was vitiated. Having recorded such a finding, it was observed that it is not necessary to go into other aspects. The writ petition was allowed and the order of removal as confirmed in appeal was set aside. On the ground that the petitioner has already undergone severe hardship ever since his date of removal, it was observed that it was not open to the

respondents to conduct the enquiry afresh.

9. The respondents carried the matter in appeal by filing WA.No.1167/2000. A Division Bench of this Court, through orders dated 23-7-2001, allowed the appeal and set aside the order of the learned single Judge. Following the judgments of the Hon'ble Supreme Court in *STATE BANK OF PATIALA vs . S.K.SHARMA : (1996)IILLJ296SC* , *VIJAY KUMAR NIGAM vs . STATE OF M.P. : AIR 1997 SC1358* , *V.RAJAMALLAIAH vs . HIGH COURT OF A.P. : 2001(3)ALD625* and other decisions on the point, it was held that non furnishing of the report in the preliminary enquiry was not fatal to the disciplinary proceedings. However, on the ground that the learned single Judge did not deal with the other aspects of the matter in view of his conclusion as to the consequences of non-furnishing of the report in the preliminary enquiry, the writ petition was remitted for fresh hearing on other aspects. The scope of the present adjudication is, therefore, confined to contentions other than those relating to the consequences of non-furnishing of the report in the preliminary enquiry.

10. The petitioner, who argued the matter appearing in person, submits that he made a representation on 27-10-1993 to the Enquiry Officer requesting him to furnish various information including the report in the preliminary enquiry, statements of witnesses, copies of certain documents, etc. According to the petitioner, under Rule 68(2)(ix)(b), the Enquiry officer was under obligation to ensure supply of the copies of the statement of witnesses recorded earlier and since the same was not supplied, the enquiry and thereby the impugned orders are vitiated. The petitioner also submits that the findings recorded by the Enquiry officer as regards Charge No.1, particularly, with reference to each allegation comprised in that charge, are contrary to record. According to him, when some of the allegations are either partly proved or not proved at all, Charge No.1 cannot be said to have been completely proved. The 3rd contention of the petitioner is that even if Charge No.1 can be taken to have been proved, the punishment imposed upon him is too harsh and disproportionate to the acts of mis-conduct alleged against him. It is finally contended that the appointing authority as well as the appellate authority have not considered the matter independently and they have simply adopted the recommendations made by the disciplinary authority.

11. So far as the 1st contention, which relates to non-furnishing of certain documents, is concerned, I am of the view that, having regard to the judgment of this Court in W.A.No.1167/2000, the same is no longer open to the petitioner. An attempt is made by the petitioner to confine the judgment of this Court in the Writ Appeal only to the furnishing of the report in the preliminary enquiry and it is canvassed that his right to be furnished the statement of witnesses was not denied by the judgment in the Writ Appeal.

12. The writ petition was allowed on the earlier occasion on the ground that the petitioner was not furnished the report in the preliminary enquiry. The order in the writ petition was, however, set aside by the Division Bench. It was held by the Division Bench that non-furnishing of the report in the preliminary enquiry did not result in any prejudice to the petitioner and that the disciplinary proceedings were not vitiated on that account. The statements and other material, which culminated in the report in the preliminary enquiry, cannot be placed at a higher pedestal than the report itself. If the non-furnishing of report was not fatal to the enquiry proceedings, so is the case if not worse, with the statements and other material, which gave rise to that report.

13. The 2nd contention of the petitioner relates to the findings recorded by the Enquiry Officer. As observed earlier, out of the two charges, only the 1st charge was held to be proved. Charge No.1 reads as under:--

'I.You had processed, sanctioned and disbursed loans/advances aggregating Rs.18.72 lacs to groups of borrowers under Cash Credit (SBF) and Agricultural Segments (including loans under DIR Scheme) during the period from 22-2-1992 to 7-4-1992 in haste and hurry without involving the Field Officer working at the Branch. Details of such loans/advances are furnished in Annexure I. It is also reported that there was no activity in respect of certain units and that certain units were not in existence. The Bank is likely to sustain huge financial loss on account of your above acts.

(i) Out of the loans/advances mentioned in Annexure-I, you had sanctioned and disbursed 89 loans aggregating Rs.17.10 lacs under Cash Credit (SBF) without conducting pre-sanction survey and without studying the viability of each

proposal. These loans purported to have been sanctioned under SETVIS Scheme were not sponsored by the Government Agency. You had not obtained photos of the borrowers in most of the cases. Further you had fixed repayment of instalments uniformly at Rs.650/- per month without any basis.

(ii) Out of the total loans/advances mentioned in Annexure-I, you had sanctioned loans/advances uniformly @ Rs.20,000/- each to 82 persons and Rs.10,000/- each to 7 persons under Cash Credit (SBF), Rs.5,000/- each to 26 persons under DIR Scheme and Rs.5,000/- each to 7 persons under Agricultural Segment without assessing the actual credit requirements of the borrowers.

(iii) You had disbursed loans/advances in cash in one lump sum without ensuring the end use of funds. Further, you had failed to obtain cash receipts/bills as evidence of purchase of assets/stocks by the borrowers in almost all the cases and place them on record. You had not conducted post-sanction survey and inspection of the units.

(iv) Consequently, most of the borrowers had not started the activity and mis-utilised the loan amounts. A few of such cases are furnished in Annexure II.

(v) You had sanctioned loans/advances of Rs.20,000/- each to a number of existing defaulters who were earlier sanctioned loans/advances ranging from Rs.1,000/- to Rs.6,000/- and closed their earlier loans/advances from proceeds of the new loans/advances. A few of such cases are furnished in Annexure III. Thus, you had passed on the pecuniary benefit to the borrowers.

(vi) You had indiscriminately sanctioned loans/advances to the members of the same family/close relatives of the borrowers who were staying together, for different activities and the loan amounts were not utilised for the said purposes. A few of such cases are furnished in Annexure-IV. Thus you had passed on the pecuniary benefit to the borrowers.

(vii) You had sanctioned/enhanced limits of Rs.20,000/- each under Cash Credit (SBF) within short period to those borrowers to whom you had earlier sanctioned loans of Rs.5,000/- each under DIR Scheme, without any basis for such

enhancement. A few of such instances are furnished in Annexure V. Thus you had passed on the pecuniary benefit to the borrowers.

(viii) Though, you were instructed by the Chief Manager (Advances), Zonal Office, Visakhapatnam, over telephone on 25-3-1992 not to sanction any loan except the loans under SEEUY, IRDP, DIR and AGRICULTURE, you had continued to sanction and disburse loans/advances other than the schemes mentioned above, in utter disregard of the instructions from your Controlling Office.

14. Charge No.1 was split through 8 separate allegations, each of which dealt with various facets of the charge. In his report, the Enquiry Officer held allegations 1 to 3 and 5 to 7 as proved. He held allegation No.4 as partly proved and allegation No.8 as not proved. However, the Enquiry Officer held that Charge No.1 as having been proved in its entirety.

16. The contention of the petitioner is that when once the Enquiry Officer recorded a finding that certain components of Charge No.1 are not proved, it cannot be held that the charge is proved in its entirety. It is very difficult to accept the contention of the petitioner. Each charge by its very nature will have several components. While some are subjective in nature, others are objective. The imputations also vary from the facts evidenced by record to those, which are required to be ascertained during the course of enquiry. It may be that the imputation against the delinquent employee as regards the particular component of a charge may not be proved. Strictly speaking, the Enquiry Officer is not required to record his finding on each and every allegation or imputation. Even if some facts, which are alleged in support of the charge, are not held to be proved, what has to be seen is as to whether the charge in its general and composite form stands proved or not. If the contention of the petitioner in this regard is to be extended to the logical conclusion, answer to each question during the enquiry should manifest its effect to the corresponding effect or extent on the finding on the charge. It is the cumulative effect of the findings or observations of the Enquiry Officer as regards various facets that lead to a finding as to whether the charge is proved or not.

16. Even otherwise, it is settled principle of law that in proceedings under Article 226 of the Constitution of India, the High Court cannot sit as an appellate authority

to reappraise the evidence recorded by the Enquiry Officer and review the findings recorded by him. It is only in rare cases where the finding is recorded when there is no evidence, or where the findings are patently perverse, that the High Court would undertake appreciation of the evidence vis--vis the charges. Having regard to the fact that voluminous evidence was recorded before the Enquiry Officer and that the Enquiry Officer, in turn, had discussed the matter with specific reference to the components of charges as well as the explanation offered by the petitioner in his reply to the Charge Sheet as well as the evidence adduced by him during the enquiry, it cannot be said that the findings recorded by the Enquiry Officer are either on the basis of no evidence or that they are perverse.

17. Coming to the 3rd submission, it needs to be observed that the Rules provide for a situation where the disciplinary authority is different from the appointing authority. In such cases, the disciplinary authority is empowered to submit to the appointing authority the records of the enquiry together with its recommendations regarding the penalty that may be imposed on the delinquent employee. The ultimate order imposing penalty is required to be passed by the appointing authority. The relevant Rule is Rule 68(3)(iii), which reads as under:--

If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in rule 67 should be imposed on the officer, it shall, notwithstanding any thing contained in sub-rule (4), make an order imposing such penalty.'

18. In a situation where the decision as to initiation of disciplinary proceedings against a delinquent employee has to be taken, and the opinion as to whether any major penalty is to be imposed on such employee, in view of the outcome in the enquiry; is to be formed by the disciplinary authority, and - the ultimate decision as to imposition of penalty is to be taken by the appointing authority, it is too difficult to assign definite roles to these two authorities with mathematical precision. It is true that inasmuch as the ultimate order of punishment emanates from the appointing authority; the real appreciation of the entire matter has to be undertaken by him. However, the marathon exercise undertaken by the disciplinary authority from the inception till the formation of the opinion cannot be reduced to

an empty formality. His opinion, which is based upon his appreciation of the matter from different angles, does certainly constitute a valid basis and material on which the appointing authority can safely rely upon. While arriving at the ultimate conclusion, even though the recommendation of the disciplinary authority may provide guidance and assistance, application of independent mind by the appointing authority is a requirement in law. Whether or not, the application of mind by the appointing authority was independent, depends on several facts. The absence of elaborate discussion with reference to each and every aspect of the matter in the order passed by the appointing authority cannot be taken as a factor to indicate that there was no independent application of mind by the appointing authority at all.

19. Another aspect of the matter is that the splitting of the considerations by the disciplinary authority, on one hand, and the appointing authority, on the other, is rather a rare phenomenon. Normally, one and the same authority undertakes the exercise commencing from initiation of disciplinary proceedings till the passing of final orders. If, an exercise, which is otherwise expected to be undertaken by a single authority, is split in to two components, to expect each of the said authorities to undertake the discussion and examination of the matter to the same extent, may not be proper and realistic. In the present case, a reading of the order passed by the appellate authority indicates that he has considered and examined the matter with reference to the entire material on record and passed the order. Though the order does not contain the discussion in detail, it cannot be said that the same is vitiated in any manner.

20. The last submission is as regards the manner of exercise of power by the 3rd respondent i.e., the appellate authority. In his appeal, apart from referring to the various inconsistencies as to the finding of the Enquiry Officer, the petitioner has also raised a ground that the punishment imposed upon him is harsh, disproportionate and arbitrary. After referring to the fact that Charge No.2 in which he was accused of accepting the illegal gratification for sanctioning the loans was held not proved by the Enquiry Officer and that the said finding was accepted by the disciplinary authority, the petitioner in his appeal, stated that ...

'(since)...the other allegations which are procedural in nature, and the punishment order imposed is very harsh, and totally disproportionate to the nature of allegations'

21. He has also referred to several extenuating circumstances. The appellate authority, the 3rd respondent, passed a detailed order dated 29-1-1998. A reading of the same indicates that the 3rd respondent undertook the discussion with reference to each and every allegation. The contention of the petitioner as regards the harshness or disproportionality of the punishment was not at all dealt with by the 3rd respondent. Not a word is uttered about the contention raised by the petitioner in that behalf.

22. It is to be noticed that an appeal is provided for under Rule 69 of the Rules. Since the Rules were framed in exercise of the powers conferred under Section 43 of the State Bank of India Act, 1955, the appeal provided for under the Rules can be treated as statutory in nature. The appeal is the remedy provided to the delinquent employee after the imposition of the penalty. The appellate authority is vested with the powers to take into account the relevant material and to satisfy himself as to

(a) whether the findings recorded in the enquiry were proper; and

(b) whether the punishment imposed on the employee was proportionate to the misconduct of which the employee is held guilty.

Even where powers of the appellate authority are not specifically provided, the purport of it is same as indicated above. However, in this case, a reading of Rule 69(2) establishes beyond any doubt that the 3rd respondent was specifically conferred with such power. Rule 69(2) of the Rules reads as under:

'69(2).....The appellate authority shall consider whether the findings are justified and/or whether the penalty is excessive or inadequate and pass appropriate orders. The Appellate Authority may pass an order confirming, enhancing, reducing or setting aside the penalty or remitting the case to the authority which imposed the penalty or to any other authority with such directions as it deems fit in

the circumstances of the case.'

23. When such is the specific requirement under the Rule, the 3rd respondent was under obligation to refer to the question as to whether the penalty imposed upon the petitioner was excessive and disproportionate. Out of the dual functions of satisfying itself as to whether the findings recorded were justified or not and whether the penalty is excessive or inadequate, the 3rd respondent has undertaken only the 1st one and did not address itself to the 2nd function at all. Such a failure on the part of the 3rd respondent certainly has resulted in injustice and hardship to the petitioner.

24. Time and again, it is reiterated that the scope of interference with the orders in the disciplinary proceedings, including the appreciation as to the adequacy of punishment, is very limited in judicial review. The *raison d'être* for voluntarily placing of fetters on the ambit of judicial review is the presumption that the appellate authority, which is well informed of the matter before it, is expected to be in a better position to effectively adjudicate the matter. The power of the appellate authority is always unlimited and on being satisfied, it can substitute its decision for the orders, which is appealed against. To put it differently, the scope of interference in writ jurisdiction would have been certainly wider, had there not been a provision for appeal. Therefore, exercise of jurisdiction by the appellate authority, both as regards extent and content, should be such as to justify the imposition of fetters on an otherwise wider jurisdiction of the High Court under Article 226 of the Constitution. Any lapse or reluctance on the part of the appellate authority to undertake the functions assigned to it, would certainly persuade the High Court to feel relieved of its self imposed restrictions. It is a different thing, if the appellate authority discusses the matter and upholds the order under appeal. However, there is no excuse for not considering the question of adequacy of punishment, when it is specifically raised before it.

25. On facts also, the complaint of the petitioner cannot be brushed aside. It should not be forgotten that two charges were framed against the petitioner. While the first charge related to procedural lapses on the part of the petitioner in sanctioning certain loans, the 2nd charge related to the alleged acceptance of

illegal gratification by the petitioner. The 2nd charge was, in a way, given up by the management. It was not a case where the Enquiry Officer was not convinced about the allegations therein. The finding on Charge No.2, which inter alia reads:

'The Presenting Officer did make any attempt to prove the above charge/allegation. Hence, I consider Charge No.2/Allegation No.2 as not proved.'

26. Even as regards Charge No.1, the Enquiry Officer found that the allegation No.4, wherein it was stated that the Units to which the petitioner advanced the loan were not in existence, was partly proved. Another allegation i.e., allegation No.8, wherein the petitioner was alleged to have continued sanctioning and disbursement of loan even after he was instructed on telephone on 25-3-1992 by the Chief Manager and the Zonal Office, was held not proved. Under these circumstances, whether the petitioner deserves the severe punishment of removal from service ought certainly to have been taken into consideration and discussed in its proper perspective by the 3rd respondent. The failure on his part on this aspect has rendered the statutory remedy of the petitioner futile. Therefore, the order of the appellate authority dated 29-1-1998 is liable to be set aside.

27. Accordingly, the writ petition is allowed to the extent indicated below:

- (a) The order dated 29-1-1998 passed by the 3rd respondent is set aside;
- (b) The 3rd respondent is directed to consider the appeal preferred by the petitioner afresh and dispose of the same dealing with the question as to whether the penalty imposed upon the petitioner is excessive and pass appropriate orders within two months from the date of receipt of a copy of this order; and
- (c) There shall be no order as to costs.