

Bhubanananda Sethy Vs. the Chairman and Disciplinary Authority, Puri Gramya Bank and ors.

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Court : Orissa

Decided On : Nov-07-2001

Reported in : 2001(II)OLR692

Judge : A.S. Naidu, J.

Acts : [Constitution of India, 1950](#) - Articles 226 and 227

Appeal No. : Original Jurisdiction Case No. 13207 of 1998

Appellant : Bhubanananda Sethy

Respondent : The Chairman and Disciplinary Authority, Puri Gramya Bank and ors.

Advocate for Def. : J. Patnaik, A.A. Das, B. Mohanty, R. Rath, T.K. Patnaik, S. Das and P.K. Nayak

Advocate for Pet/Ap. : S.N. Mohapatra, P.C. Das, J.S. Mishra, B. Rout, S. Behera, S.K. Mishra, P. Panda and B.P. Nayak

Disposition : Application allowed

Judgement :

A.S. Naidu, J.

1. The petitioner, who has been removed from the service of the Puri Gramya Bank, has filed this writ application challenging the initiation of a disciplinary proceeding as well as the final order of dismissal which was confirmed by the appellate authority by the order dated April 18, 1998, Annexure-6.

2. The petitioner was appointed as an Officer of Puri Gramya Bank in the year 1983. He was posted at Chandanpur Branch and was entrusted with the work of disbursement of loans under different schemes sponsored by the Government of India for development of agriculture, pisciculture, Irrigation etc., certain acts of misfeasance and malfeasance were alleged against, the petitioner regarding disbursement of loans which were enquired by the Central Bureau of Investigation and was found to be not correct. In the year 1995, the petitioner was served with a suspension order on the basis of the allegation that he had committed certain acts of omission and commission while discharging his duties as the Branch Manger of Chilka-Naupada Branch. The suspension order was passed in exercise of power conferred under Regulation 30(4) of the Puri Gramya Bank Staff Service Regulation, 1980. Thereafter, the petitioner was served with a charge sheet and after observing all paraphernalia, a disciplinary proceeding was initiated and the petitioner was called upon to show cause. It is pertinent to mention here that the charge sheet (Annexure-4) was framed and was communicated by the Chairman and Disciplinary Authority. The petitioner, thereafter, submitted his written explanation. It is alleged by the petitioner that though he prayed to call for certain documents and the persons who had received the loans for being examined in the disciplinary proceeding, unfortunately no opportunity was granted to him. On the basis of the inquiry report, on July 10, 1997, the Chairman and Disciplinary Authority, in exercise of power conferred upon him under Regulation 30(i) of the Puri Gramya Bank Staff Service Regulation, 1980, removed the petitioner from service of the Bank forthwith. The copy of the said order is filed as Annexure-5 to the writ application.

3. Challenging the enquiry report and punishment imposed, the petitioner preferred an appeal before the Chairman of the Gramya Bank, the appellate

authority dismissed the appeal by its order dated April 18, 1998 which is impugned in this writ application on several grounds.

4. After receiving the rule, a counter affidavit has been filed by the opp. parties emphatically submitting that adequate opportunity was given to the petitioner in course of disciplinary enquiry and there is absolutely no illegality in the proceeding nor any prejudice is caused to the petitioner.

5. Heard learned counsel for the petitioner and Mr. Patnaik, learned Senior Counsel appearing for the Bank.

Regulation 31(2) of the Bank's Regulation which is quoted in paragraph-18 of the counter affidavit reads as follows :

'Appeal shall be preferred to the Appellate Authority mentioned in Regulation 32 within 30 days from the date of service of the order applied against. The Appellate Authority has to consider whether the findings of the disciplinary authority are justified and whether the penalty imposed is adequate and pass suitable order as early as possible.'

Reading of the aforesaid provision clearly reveals that it was incumbent upon the appellate authority to consider as to whether the finding of the disciplinary authority is justified or not and whether the penalty imposed is adequate or not and only thereafter, pass suitable orders.

5. Law is well settled that the appellate authority is the final Court of facts. An onerous duty is vested upon the appellate authority to re-assess the materials available in the disciplinary proceeding, so as to enable it to arrive at an independent conclusion either agreeing with the finding of the disciplinary authority or otherwise.

The appellate authority has a legal duty to deliberate about and ponder over as well as carefully examine the case of the appellant on merit and adjudge it either by confirming, enhancing, reducing or setting aside the punishment imposed by the disciplinary authority. The Hon'ble Supreme Court in catena of decisions had occasion to hold that the practice of the appellate authority dismissing the statutory

appeals against the orders which prima facie seriously prejudice the right of the aggrieved party without giving reasons, is a negation of the rule of law. (See- Mahabir Prasad Santosh Kumar v. State of U.P. and others, AIR 1970 SC 1302).

6. In the case at hand, from the materials on record, it cannot be determinea as to how the Board of Directors considered the appeal and really what was considered. The decision of the Board of Directors, if any, is not filed before this Court and I do not have any opportunity to consider the orders, if any, at this stage.

7. Perusal of the impugned order (Annexure-6) clearly reveals that the Board of Directors who is the appellate authority, has neither re-assessed the evidence nor scrutinised the veracity or otherwise of the conclusion arrived at by the disciplinary authority. The order further reveals that the Board of Directors have not complied with the arduous responsibility vested upon it while considering the appeal and have rejected the same with a bald and Non-speaking order.

8. In course of hearing, learned counsel for the petitioner emphatically submitted that the Chairman and Disciplinary authority at whose instance the charge sheet was framed and the order of punishment was imposed, was also a member of the Board of Directors. This fact is denied by Mr. Patnaik, learned Senior Counsel for the opp. parties who submitted on instruction that when the appeal filed by the petitioner was taken up for consideration, the Chairman, who was the disciplinary authority, remained absent. Thus, there is no violation of the principles of natural justice.

9. In view of the fact that the appellate authority has not considered the objection raised and the grounds canvassed by the appellant in his appeal memo, and has neither re-assessed the evidence and other materials available in disciplinary proceeding nor arrived at any finding independently, I feel, it is a fit case where the impugned order (Annexure-6) cannot be sustained. I have, therefore, no hesitation to quash the order dated April 18, 1998 passed by the appellate authority, Board of Director, (Annexure-6) and remand the matter for fresh disposal by the appellate authority strictly in consonance with law. It is open for the petitioner to raise all points legally available before the Appellate Authority within the frame work of the Puri Gramya Bank Staff Service Regulation, 1980.

The writ application is, accordingly, allowed. No costs.

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