

A.B.V. Reddy Vs. the Deputy General Manager and Disciplinary Authority and Another

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Court : Andhra Pradesh

Decided On : Oct-12-2012

Judge : Vilas V. Afzulpurkar

Appeal No. : Writ Petition No.4859 of 2000

Appellant : A.B.V. Reddy

Respondent : The Deputy General Manager and Disciplinary Authority and Another

Advocate for Def. : Ms. Uma Devi

Advocate for Pet/Ap. : Mr. J. Sudheer

Judgement :

Heard Mr. J. Sudheer, learned counsel for the petitioner and Ms. Uma Devi, learned counsel for the respondent-bank.

2. Facts, in brief, are as under:

(a) Petitioner was working as a Clerk in the Syndicate Bank, Nizam Shahi Road, Hyderabad. On account of serious allegations, against the petitioner, viz. financial irregularity including withdrawal of funds from the account of the customer of the

bank by questionable methods, he was placed under suspension by proceedings of the bank dated 04.05.1989. A criminal complaint was also lodged by the bank, registered as Cr.No.172 of 1989 by the Station House Officer, Afzalgunj, Hyderabad and after investigation, C.C.No.31 of 1990 was registered against the petitioner before the IV Metropolitan Magistrate, Hyderabad. After trial, the said criminal case ended in acquittal of the petitioner under judgment dated 15.03.1996 and the appeal filed against the said judgment being CrI.A.No.691 of 1996 was also dismissed by this Court under judgment dated 10.09.1996. The acquittal of the petitioner, therefore, became final.

(b) By proceedings dated 31.07.1998 the suspension of the petitioner was revoked and he was posted in the Regional Office, Ongole. While so, the petitioner was served with charge sheet dated 11.11.1999 wherein as many as 8 charges were framed against the petitioner and he was directed to submit explanation. Under petitioner's reply dated 20.11.1999, it is alleged that the charges are vague and the charge sheet is issued four years after acquittal in the criminal case and the charges are based on self-same allegations, as were subject matter of the criminal prosecution of the petitioner and accordingly, petitioner sought dropping of the disciplinary case.

(c) Petitioner also requested the bank to furnish the list of documents and witnesses to enable him to submit written statement in defence. Under reply of the bank dated 15.02.2000, petitioner was, however, advised to submit reply and he was informed that the list of documents will be made available at the appropriate stage. Petitioner protested against denial of legitimate right to get list of witnesses and copies of documents, as denial of natural justice and reasonable opportunity to submit explanation. He also claimed that the judgment of the criminal Court completely answers the charges. He also pointed out that a crucial date mentioned in the charge sheet happens to be a Sunday, which shows non-application of mind while issuing the charge sheet. By letter of the bank dated 29.02.2000, a corrigendum was issued correcting the said crucial date from 03.01.1989 to 08.01.1989.

3. Petitioner has, thereafter, filed the present writ petition challenging the charge sheet as illegal, irrational and opposed to principles of natural justice and non-est in the eye of law and consequently, to treat the suspension period as on duty with all consequential benefits.

4. The principal contentions raised in the writ petition are that the charge sheet is vague without any particulars and is not supported by relevant documents and list of witnesses, as is required under the relevant regulations. It is also claimed that the charges in the charge sheet are identical to that of the charges in the criminal prosecution wherein petitioner is already acquitted and this Court, while dismissing the criminal appeal, confirmed the acquittal. Petitioner, therefore, contended that the departmental enquiry, based on the self-same charges and incident, is impermissible. The ground as to delay in initiating the disciplinary proceedings four years after acquittal is also questioned as it, in effect, amounts to proposing to enquire into the incidents of 1989 under charge memo of 1999. Non-furnishing of documents and list of witnesses in spite of request was also questioned on the ground that it amounts to denial of reasonable opportunity to the petitioner.

5. Respondent - bank filed a counter affidavit denying the allegation of delay by pointing out that after criminal case ended in acquittal and after dismissal of the appeal, it took time for the bank to take back the documents marked in the criminal case and as such, as soon as the documents were available, the disciplinary proceedings were initiated by issuing the charge memo. The bank also contended that there is no bar, even according to the petitioner, from initiation of disciplinary proceedings irrespective of the result of the criminal prosecution. The bank also denied that the charges in the disciplinary proceedings are identical to the one adjudicated upon in the criminal proceedings. The bank also relied upon clause 19.5(j) of the bipartite settlement, which empowers the bank to initiate the disciplinary proceedings on disciplinary grounds distinguishable from the criminal case. The bank also reiterated that invocation of jurisdiction of this Court under Article 226 of the Constitution of India is not called for at this stage, as the petitioner would get adequate opportunity to defend himself in the disciplinary case.

6. Petitioner filed a reply affidavit, primarily, relying upon the findings of the criminal Court in his favour and that the charge sheet being not specific and vague, petitioner is put to prejudice. Pending the writ petition, this Court granted stay of further proceedings by order dated 18.08.2003.

7. By order dated 18.08.2003, this Court recorded, *prima facie*, satisfaction that the departmental proceedings and criminal case being on the self-same charges, after acquittal in criminal case, the disciplinary proceedings on the very same charges cannot be held to be valid. Accordingly, pending disposal of the writ petition, the respondents were directed not to proceed with the departmental proceedings, against the petitioner, pursuant to the charge sheet dated 11.11.1999. The writ petition was, accordingly, posted for hearing subject to part heard in the third week of October, 2003.

8. Both the learned counsel made elaborate submissions based upon their respective case, summarized, as above.

9. Mr. J. Sudheer, learned counsel for the petitioner, placed reliance upon a decision of the Supreme Court in **UNION OF INDIA v. GYAN CHAND CHATTAR** (2009) 12 SCC 78) for the proposition that charges in disciplinary proceedings must be precise, definite and clear and not perfunctory or vague. The said proposition is also supported by another decision of the Supreme Court in **ZUNJARAO BHIKAJI NAGARKAR v. UNION OF INDIA** (1999) 7 SCC 409). Reliance on the decisions of the Supreme Court in **M. PAUL ANTHONY v. BHARAT GOLD MINES LTD.** (AIR 1999 SC 1416) and **STATE BANK OF HYDERABAD v. P. KATA RAO** (2008) 15 SCC 657) is also placed by the learned counsel but, as even according to the learned counsel there is no bar for conducting departmental enquiry simultaneously with criminal prosecution, if the charges in both the proceedings are different and distinguishable. Further, in the present case, the departmental proceedings are initiated long after the conclusion of criminal proceedings and the present case is not the one where criminal proceedings and departmental proceedings are taken up simultaneously. The ground of inordinate delay vitiating the departmental enquiry is supported by the decisions of the Supreme Court in **SECRETARY, FOREST DEPARTMENT v.**

ABDUR RASUL CHOWDHURY (2009) 7 SCC 305); **STATE OF MADHYA PRADESH v. BANI SINGH** (1990 (SUPP) SCC 738) and **STATE OF PUNJAB v. CHAMAN LAL GOYAL** (1995) 2 SCC 570).

10. Apart from the decisions, referred to above, there is one supervening circumstance, which is required to be kept in mind. During the pendency of this writ petition, the petitioner reached superannuation and retired on 30.04.2009. A letter of the bank permitting the petitioner to retire unconditionally, which is placed on record, may be extracted hereunder for better appreciation.

“To

Sri A.B.V. Reddy,

Emp.No.136734

Clerk

Lead District Office

Ongole.

Dear Sir,

As per service conditions in force, you have reached superannuation on 30.4.09. We recall, with pleasure your long association with the Bank and service rendered to the public.

In terms of letter No.114/3461/RON/PS/136734 dated 28.1.2009 you are hereby relieved from the Services of the Bank today i.e. on 30.4.09, after office hours.

While wishing you a peaceful and happy retired life, we also look forward to your continued association with the Bank, as a valued customer, ever after retirement.

Yours faithfully,

Sd/-

(G. Andanda Rao)

Lead District Manager.

11. Based on the said circumstance, learned counsel for the petitioner has also placed reliance upon a decision of the Supreme Court in **BHAGIRATHI JENA v. BOARD OF DIRECTIONS, O.S.F.C** (AIR 1999 SC 1841) to contend that, in any case, the departmental enquiry cannot now proceed, as there is no regulation under which the bank could conduct disciplinary proceedings against a retired employee.

12. Learned counsel for the respondent, however, has strenuously contended that the petitioner cannot take advantage of his own wrong. It is stated that the petitioner himself approached this Court questioning the charge sheet and by order dated 18.08.2003 in WPMP.No.20087 of 2003 and WPMP.No.6455 of 2000 obtained stay of disciplinary enquiry pending the writ petition. Learned counsel, therefore, submits that petitioner having not allowed the disciplinary case to be conducted all these years, cannot now turn round and claim that on account of the fortuitous circumstance of his retirement, the departmental proceeding has lapsed. Learned counsel has, therefore, placed reliance on the decision of the Supreme Court in **UNION OF INDIA v. AJOY KUMAR PATNAIK** (1995) 6 SCC 442), particularly, placing reliance on the following para from the said decision:

“10. Since the competent authorities at different levels had considered the material and ultimately had decided to compulsorily retire the respondent from service, it cannot be said that it is an arbitrary decision. It is true that pending the proceedings the respondent has already retired from service on attaining the age of superannuation, but that would not provide a ground to dispose of this matter without giving any finding on the action taken by the competent authority. Otherwise, in all cases it would cause grave damage to public justice. The employee would get away with it due to pending proceedings. Therefore, it needs to be considered and decision rendered thereon whether the action taken by the Government or the competent authority is valid in law. In that perspective, mere retirement of the officer by efflux of time pending proceedings would not be a ground to close the matter.”

13. I have earnestly considered the rival contentions and the facts and circumstances of this case, in the light of the legal position settled by the decisions of the Supreme Court, referred to above and I am of the view that the petitioner cannot be subjected to disciplinary proceedings on the basis of the impugned charge memo. In addition, I am also of the opinion that the petitioner having been allowed to superannuate unconditionally and in the absence of any power reserved with the management of the bank to continue the pending disciplinary case against a retired employee, the entire disciplinary case, even otherwise, abates against the petitioner. The reasons in support of aforesaid conclusions are as follows:

(1) The charges framed against the petitioner in the criminal prosecution are, however, not part of the record but the judgment of the criminal Court as well as the judgment of this Court in appeal are produced by the learned counsel of the petitioner. It appears therefrom that the charges, framed against the petitioner, which were subject matter of the criminal case were alleged offences under Sections 468 and 471 of the Indian Penal Code, 1860 alleging forgery of the cheque of M/s. Universal Wires, Hyderabad, customer of the bank, read with Section 201 IPC causing disappearance of a cheque leaf of the customer coupled with Section 380 IPC amounting to theft of cheque of customer of the bank and cheating under Section 420 IPC leading to unauthorized withdrawal of the amounts from the account of the customer of the bank and its misappropriation by the petitioner. The said criminal charges, therefore, revolved around the theft allegedly committed by the petitioner relating to a blank cheque of another customer of the bank and its utilization by forgery for withdrawal of amount from account of customer of the bank and misappropriation of his funds so withdrawn. The criminal Court held that prosecution failed to establish necessary ingredients of Sections 471 and 420 IPC and also failed to establish the offence under Section 201 IPC. It also held that, however, grave the suspicion against the petitioner, it cannot partake the character of proof in the eye of law. Consequently, the petitioner was acquitted. The said acquittal was confirmed by this Court in the criminal appeal, referred to above.

The charges framed against the petitioner, in the disciplinary case, are quoted below:

1. You, with a dishonest intention stole/caused to steal two cheques Nos.114557 and 114558 surrendered by Sri V. Balakrishna, holder of SB A/c No.5639 while closing his SB account on 8.1.1989.
2. That you filled up/got filled up cheques No.114557 for Rs.5,00,000/- and drew/got drawn the same on Current A/c No.6166 of M/s. Universal Wires Limited, the account in which a balance of over RS.5,00,000/- was lying since 31.12.1987.
3. That you forged/got forged signatures of authorized signatories of Current A/c No.6166 of M/s. Universal Wires Limited.
4. That you opened/caused to open one account No.113 at Vasavi Cooperative Bank, on 9.1.1989 reported to be of one Sri K.V. Reddy, Contractor, Saidabad, Hyderabad, who is a person best known to you.
5. That you tendered/got tendered the said cheques No.114557 which contained forged signatures of authorized signatories of M/s. Universal Wires Limited, for collection at Vasavi Cooperative Bank, Siddiamber Bazar, Hyderabad, on 9.1.1989, the proceeds of which were to be credited to the said A/c No.113 of Sri K.V. Reddy.
6. That, thus you got fraudulently transferred a sum of Rs.5,00,000/- from Current A/c No.6166 of M/s. Universal Wires Limited with out N.S. Road Branch, Hyderabad to A/c No.113 of Sri K.V. Reddy, the account got opened by you/caused to be opened by you at Vasavi Cooperative Bank, Siddiamber Bazar, Hyderabad.
7. That you withdrew/got withdrawn/caused withdrawal of a sum of Rs.1,00,000/- and Rs.4,00,000/- from account No.113 of the said Sri K.V. Reddy, the person know to you, on 19.1.1989 and 24.1.1989 respectively.
8. That, thus you misappropriated/caused to misappropriate a sum of Rs.5,00,000/-, which was fraudulently got transferred from current A/c No.6166 of

M/s. Universal Wires Limited to A/c. No.113 of the said Sri K.V. Reddy, opened at Vasavi Cooperative Bank, Siddiamber Bazar, Hyderabad, and gained undue pecuniary advantage at the cost of the Bank/caused to gain pecuniary advantage at the cost of the Bank/caused to pass on undue pecuniary advantage for a person known to you, at the cost of the bank.

It would be evident from the above that the charges framed in the disciplinary case appear identical to the charges in the criminal case except that the relevant criminal offence with regard to each of the charge is not mentioned and the last of the charges is framed on the basis that the petitioner gained pecuniary advantage at the cost of the bank, which amounts to grave misconduct. In **GOVERNMENT OF A.P. v. C. MURALIDHAR** (AIR 1997 SC 3005) it was held by the Supreme Court that when charges in the disciplinary proceedings are self-same allegations, which are subject matter of criminal case, the disciplinary proceedings cannot be held. However, it is open for the disciplinary authority to proceed with the disciplinary case with reference to other charges. On the facts of the present case, however, it is difficult to appreciate the contentions of the respondents that the charges in the disciplinary case are distinct and separate from the charge sheet in the criminal case.

(2) Assuming, however, the charges are distinct and separate, so far as the disciplinary case are concerned, there cannot be any justification for the bank in not furnishing the list of witnesses and documents to the petitioner to enable him to submit a proper explanation. The letter of the management of the bank that the petitioner must file explanation first and that the documents will be furnished to him at appropriate stage clearly amounts to denial of a reasonable opportunity to defend. Petitioner is, therefore, justified in complaining of denial of reasonable opportunity.

(3) Lastly, in my view, the more important ground to be considered in support of the petitioner is the circumstance that he has been unconditionally allowed to superannuate without reserving any right with the respondent bank to continue the pending disciplinary case. As already noted, no rule/regulation of the bank is brought to the notice of this Court, which saves a pending disciplinary case against

an employee, who has reached superannuation. The decision of the Supreme Court in **BHAGIRATHI JENA's** case (8 supra), therefore, applies to the facts and circumstances in all fours. The contention of the learned counsel for the respondent based on **AJOY KUMAR PATNAIK's** case (9 supra) is not of much assistance as on the facts of that case, as the employee therein superannuated, pending an appeal against the disciplinary order of compulsory retirement. Moreover, the petitioner cannot be blamed, as the disciplinary enquiry itself was initiated ten years after the incident and four years after the petitioner's acquittal in the criminal case. Further, in this writ petition, this Court, by order dated 18.08.2003, had granted stay of further proceedings after hearing both sides and even, thereafter, the writ petition remained pending without urgency being shown on the part of the respondent - bank till the writ petition was heard, in the first instance, on 14.06.2007 and on the last occasion, on 31.08.2012, when it was heard by me and reserved for orders. Further, another 3 years have gone by after superannuation of the petitioner and as such, in my view, it is just and appropriate to quash the impugned charge memo by allowing the writ petition and directing the respondent - bank to pay salary with accompanying allowances from the date of suspension till superannuation, as admissible to the petitioner, after deducting the amount of subsistence allowance, if any, paid to the petitioner during the aforesaid period and thereafter, release the terminal benefits due to the petitioner on and upon his superannuation dated 30.04.2009.

The writ petition is accordingly allowed. As a sequel to the disposal of the writ petition, the miscellaneous applications, if any, shall stand disposed of as infructuous. In the circumstances, there shall be no order as to costs.

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