

(2009) 01 MAD CK 0239

In the Madras High Court

Case No : Writ Petition No. 1855 of 2003

A. Suresh Muthu

APPELLANT

Vs

Chief General Manager (Appellate Authority) State Bank of
India and General Manager (D and PB) Appointing Authority

RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2009) 01 MAD CK 0239

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : P.M. Subramaniam, for A. Kuppuswamy, for the Appellant; K.S. Sundar, for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondents.

2. It has been stated that the petitioner was working as Assistant Manager (Advances - SIB), State Bank of India, Chingleput Branch, during the

period, from 7.1.93 till 4.8.95. While so, the petitioner was issued with a memorandum of charges, in DIS/CON/RR/560, dated 28.8.99,

containing three charges, issued by the second respondent, pointing out certain alleged unfair practices in the sanction of loan and credit limits. The

petitioner had submitted a suitable reply, on 13.10.99. However, the second respondent had issued an amended charge memo, on 13.3.2000,

omitting the sentence ""you had used middle men for sanction of advances"". Charges 2 and 3 had remained unamended.

3. The amended Charge No. 1 had stated that the petitioner had resorted to

unfair practices in the sanction of credit limits to M/s.Devi Tyres. The second charge had stated that the petitioner had failed to monitor the creation of assets by M/s.Sathish Broiler for the loans availed by them. The third charge related to the disbursement of cash credit limit of Rs. 3 lakhs sanctioned to M/s.New River Annai Selva Educational Trust, contrary to the instructions issued in that regard.

4. It has been further stated that the petitioner had been suspended from service, on 22.10.96, pending initiation of disciplinary proceedings. The petitioner had been reinstated in service, on 15.12.97. No charge memo had been served on him at that time. However, the charge memo, dated 28.8.99, had been received by the petitioner only on 15.9.99, after a lapse of 2 years and 11 months of suspension. Further, the amended charge memo, based on which the enquiry had been held, was issued to the petitioner only, on 15.3.2000, after a lapse of 3 years and 5 months from the date of his suspension from service. The delay was not due to the petitioner. The inordinate and unexplained delay in issuing the charges had caused grave prejudice and mental agony to the petitioner.

5. It has been further stated that since there is no financial loss to the Bank the second respondent ought to have conducted a proper preliminary enquiry, relating to the details contained in the Charge Memo. The statement of P.W.4 had been obtained behind the back of the petitioner and therefore, it does not have the sanctity in the eye of law. Since the manager of the Bank is the final authority with regard to the sanctioning and the disbursement of the loans and other monetary dealings, he should have been treated as a co-delinquent, along with the petitioner. However, he had been made a witness on behalf of the management of the Bank, as P.W.3. He was let-off without any punishment, contrary to the service rules and the concept of equality enshrined in the Constitution of India. The second respondent had failed to consider that the evidence of P.W.3 is not an independent evidence. The second respondent had failed to take note of the fact that there was no oral or documentary evidence to prove the charges levelled against the petitioner. Therefore, the findings of the second respondent are perverse and illegal. Further, the second respondent had violated the principles of natural justice, while disagreeing with the findings of the enquiry officer, with regard to Charge No. 1. The second

respondent had communicated to the petitioner stating that Charge No. 1 had been conclusively proved, by his letter, dated 23.11.2000. Thus, the opportunity said to have been given to the petitioner thereafter, was only an empty formality. In fact the second respondent ought to have communicated the tentative reasons for his disagreement. Thereafter, the second respondent ought to have given the petitioner an opportunity to put forth his case, before coming to his conclusions.

6. It has been further stated that the first respondent Appellate Authority ought to have disposed of the appeal of the petitioner, within a period of two months from the date of receipt of the appeal, as per the regulations in force. The delay caused by the first respondent Appellate Authority was arbitrary, unreasonable and illegal. Since there was no financial loss to the bank, the quantum of punishment to be imposed on the petitioner ought to have been considered by the first respondent Appellate Authority. Since the vital documents like the inspection register, lock book of retainer taxi etc., had not been given to the petitioner in spite of his repeated requests, the action initiated against the petitioner has become null and void. Further, the second respondent had failed to consider that the borrower had already furnished the relevant documents relating to the assets and the machinery and as such it is clear that the necessary assets had been created by the borrower.

7. The enquiry officer had found that the first charge against the petitioner had not been proved. He had held that Charge Nos. 2 and 3 had been proved beyond doubt. It has been further stated that the appointing authority, the second respondent herein had held by his communication, dated 23.11.2000, that Charge No. 1 had been well established and that it had been conclusively proved. Therefore, a penalty of "Reduction in basic pay, by two stages, for two years, with the period of suspension treated as suspension only", under Rule No. 67(f) of State Bank of India Officers' Service Rules, 1992, had been issued by the second respondent.

8. It has also been stated that as the period of suspension was treated as suspension only, the petitioner was not eligible for promotion, seniority and increment, for the period of suspension. Being aggrieved by the order of the second respondent, the petitioner had preferred an appeal before the first respondent Appellate Authority. The first respondent Appellate Authority,

by his order, dated 30.9.2002, had rejected the appeal, confirming the penalty imposed on the petitioner, stating that the penalty imposed was commensurate with the gravity of the charges. In such circumstances, the petitioner had preferred the present writ petition before this Court, under Article 226 of the Constitution of India.

9. In the counter affidavit filed on behalf of the respondents the averments made by the petitioner had been denied. It has been stated that the

petitioner was working as Assistant Manager (Advances) in the Branch Office at Chengleput, during the years 1993 to 1995. In the course of the

Branch audit it was revealed that the petitioner had committed certain acts of misconduct. Hence, the disciplinary authority had placed the

petitioner under suspension, pending initiation of disciplinary proceedings, by an order, dated 22.10.96. Since the charge sheet and the imputations

could not be finalised, promptly, the suspension had been revoked by an order, dated 15.12.97. However, after the relevant records could not be

collected the charge sheet, dated 28.8.99, had been issued and it was served on the petitioner, on 15.9.99. Since the sentence that the petitioner

had used middlemen for sanction of advances was to be omitted, an amended charge sheet, dated 13.3.2000, had been issued.

10. It has been further stated that even though the acts leading to the framing of the charges were of the year 1994, the charges were framed only

on the basis of a complaint given by the affected borrower. Therefore, the charge sheet had been issued, on 15.9.99, and the amended charge

sheet had been issued, on 13.3.2000. Since the enquiry officer appointed to conduct the enquiry had gone on leave, another enquiry officer had

been appointed, on 6.7.2000, and the enquiry was conducted, from 19.1.2000 to 21.7.2000. The petitioner had submitted his defence brief, on

20.11.2000, after the submission of the enquiry report by the enquiry officer, on 17.11.2000. However, the disciplinary authority did not accept

the findings of the enquiry officer that the first charge had not been proved. Therefore, the disciplinary authority had recorded the tentative reasons

holding that Charge No. 1 had also been proved. Hence, the petitioner had been given an opportunity by the disciplinary authority to put forth his

case. The petitioner had submitted a reply statement, on 29.12.2000, to the disciplinary authority. Based on the recommendation of the disciplinary

authority, the appointing authority had passed an order of punishment, dated 14.5.2001, imposing the punishment of ""Reduction in basic pay by

two stages, for two years, with the period of suspension treated as such"".

11. It has been further stated that the petitioner had preferred an appeal to the first respondent, on 12.7.2001. While the appeal was pending the

petitioner had moved this Court by way of a writ petition, in W.P. No. 31904 of 2002, for a direction to dispose of the appeal. Pursuant to the

direction issued by this Court, the appeal had been considered on merits and rejected. It has been stated that the first charge was found proved not

merely on the statement of P.W.4, S.Prasannan, as contended by the petitioner. The first charge was held to have been proved by the disciplinary

authority based on circumstantial and material evidence. One of the customers of the Bank had alleged that a sum of Rs. 50,000/- had been

withdrawn by the petitioner. The petitioner had admitted his writings in the voucher for the said withdrawal. Hence, the charge made against the

petitioner has been held to be proved. Based on the evidence let in by the six witnesses who had been examined and the documents which had

been marked, it was held that all the three charges levelled against the petitioner had been proved. The petitioner was represented by his defence

representation and he had cross examined the witnesses and availed full opportunity during the enquiry.

12. It has been further stated that since K.S.Ramalingam (P.W.3), the Branch Manager of Chengleput Branch, was on over all supervision of the

advances, the petitioner cannot claim that P.W.3 should be made responsible or accountable for the lapses and irregularities committed by the

petitioner. The petitioner, as the Assistant Manager (Advances), was the person who was responsible for the irregularities committed. The fact that

no financial loss had been caused to the Bank does not in any way absolve the petitioner of the lapses and irregularities committed by him. There

are no rules which provide for a preliminary enquiry being conducted before placing an official of the Bank under suspension. A copy of the

prosecution brief had been sent to the defence representative of the petitioner by the enquiry officer, on 12.8.2000. Reminders had been sent to

him, on 25.9.2000 and 9.11.2000 and copies of which had been endorsed by the petitioner. Thus, it is clear that sufficient opportunity had been

provided to the petitioner to defend himself. In fact the order imposing the penalty on the petitioner had been issued by the second respondent only

after considering the submissions made by the petitioner, in his letter, dated 29.12.2000, and the order, dated 7.5.2001, had been served on the

petitioner. The appeal preferred by the petitioner, on 12.7.2001, could not be disposed of within the stipulated time due to circumstances beyond

the control of the first respondent. The delay was not intentional or malafide in nature. The first respondent Appellate Authority had applied his

mind and had taken a decision after an independent examination of the entire facts and circumstances of the case and on considering the issues

raised by the petitioner in the appeal. In such circumstances, the writ petition is devoid of merits and therefore, it is liable to be dismissed.

13. The main contentions of the learned Counsel appearing on behalf of the petitioner are that there has been an unexplained extraordinary delay in

conducting the enquiry against the petitioner, based on the charges levelled against him. No charges had been framed against the Manager of the

Bank in which the petitioner had been employed, even though he is the final authority responsible for the monetary dealings of the Bank. Even

though the enquiry officer had found that the first charge against the petitioner had not been proved, the disciplinary authority had held that the said

charge had been proved beyond doubt. In spite of repeated requests made by the petitioner the relevant documents pertaining to the charges

levelled against him had not been furnished to the petitioner. The disciplinary authority had not given an opportunity to the petitioner before arriving

at his conclusions, holding that all the three charges levelled against the petitioner had been proved. The punishment imposed on the petitioner, with

regard to the charges alleged against him, is disproportionate in nature. The Appellate Authority had disposed of the appeal filed by the petitioner,

without application of mind to the issues involved. There has been a long delay in the disposal of the appeal. The petitioner has been prejudiced

due to the delays caused in conducting the enquiry against him and in the disposal of the appeal filed by him before the first respondent Appellate

Authority, challenging the order of the second respondent, imposing the punishment on the petitioner.

14. The learned Counsel for the petitioner had also contended that it was open to the disciplinary authority to arrive at tentative conclusions but he

cannot make a final conclusion before giving the petitioner a reasonable opportunity to put forth his case. It has also been submitted that the

respondents have not followed the provisions of the State Bank of India Officers Service Rules, 1992, framed in accordance with the State Bank

of India Act, 1955, while imposing the punishment on the petitioner.

15. The learned Counsel appearing on behalf of the petitioner had relied on the following decisions in support of his contentions:

15.1. In *State of Madhya Pradesh v. Chintaman Sadashiva Waishampayan* AIR 1961 SC 1623, the supreme Court had held that if copies of

relevant documents had not been given to the person who is entitled to them, it would mean that the enquiry conducted against the person had not

been held in accordance with the rules of natural justice.

15.2. In *State Bank of India and others Vs. D.C. Aggarwal and another*, , the Supreme Court had held that the disciplinary authority, while

imposing the punishment, cannot act on materials which were neither supplied nor shown to the delinquent. Imposition of punishment on an

employee, on materials which were not only not supplied but were not disclosed to him, cannot be countenanced. Procedural fairness is as much

an essence of right and liberty as the substantive law itself.

15.3. In *M. Rajamanickam v. Bharat Heavy Electricals, Ltd. and Anr.* 1997 (3) L.L.N. 550, it was held that an order of punishment imposed on a

delinquent can be interfered with if it is found to have made hostile discrimination between delinquents facing enquiry on the same charges and if it

is harsh or disproportionate to the proved misconduct. It would suffer from the vice of arbitrariness, violating Article 14 of the Constitution of

India, if similarly placed delinquents had been let off with minor punishments.

15.4. In *Punjab National Bank and Ors. v. Kunj Behari Misra and Anr.* 1998 2 LLJ 809 SC the Supreme Court had held that the disciplinary

authority, while differing with the findings of the enquiry authority, has to follow the principles of natural justice by giving an opportunity of hearing

to the delinquent officer

15.5. In *State Bank of India and Ors. v. Arvind K. Shukla* AIR 2001 SC 2398, it was held that the disciplinary authority, while disagreeing with

the conclusions and findings arrived at by the enquiry officer, is required to record its tentative reasons for the disagreement. Non-furnishing of

reasons to the delinquent officer is fatal and vitiates the ultimate order of dismissal.

15.6. In *State Bank of India and Others Vs. K.P. Narayanan Kutty*, it has been held that when the punishing authority is not persuaded to accept

the favourable conclusions of the enquiry officer an opportunity should be afforded to the delinquent employee, irrespective of whether or not some prejudice is shown to have been caused by the denial of such opportunity.

15.7. In *Bongaigaon Refinery & P.C. Ltd., and Ors. v. Girish Chandra Sarmah* AIR 2007 SCW 5185, the Supreme Court had held that if the

respondent had been charged of dishonestly selecting and recommending purchase of certain lands and when the decision to purchase the land,

selected by the respondent, had been taken after it was unanimously accepted by three committees, it cannot be said that the respondent alone

was responsible for the purchase of the land. Making the respondent alone as the scapegoat would be discriminatory and perverse in nature.

15.8. In *A. Obaidhullah and Ors. v. State of Tamil Nadu* 2006 (1) L.L.N. 300, a Division Bench of this Court had held that delay vitiates

disciplinary proceedings, defeats justice and causes prejudice to the delinquent employee, if there is no satisfactory explanation for such delay.

15.9. In *N. Nandagopalan Vs. The Secretary to Government Personnel and Administration Reforms (Q) Department*, , this Court has held that it

is well settled in law that if employees are involved in the same incident, the department should proceed against all. There is no discretion to the

Department to proceed against some of the employees and not to take any action against the others identically placed.

15.10. In *T. Shanmugasundaram v. Commissioner, Pollachi Municipality* 2008 (6) MLJ 621, this Court had held that, as per the Supreme Court,

the disciplinary authority has to give reasons for differing from the enquiry officer's conclusions and the delinquent is to be given an opportunity to

submit his objections. If such opportunity is not given, it would amount to violation of the principles of natural justice.

15.11. In *M.D. Parmar v. Y.B. Zala* 1980 1 L.L.J. 260, the Gujarat High Court had held that a delay of about one and half years must be

considered fatal in the point of view of affording reasonable opportunity to the employee to show cause against the charges levelled against him.

The very delay in initiating the proceedings must be held to constitute a denial of reasonable opportunity to defend himself. It would amount to violation of the principles of natural justice.

16. Per contra the learned Counsel appearing on behalf of the respondents had contended that the first charge against the petitioner was held as not proved by the enquiry officer. However, the other two charges levelled against the petitioner had been proved based on the evidence available on record. The disciplinary authority had differed from the findings of the enquiry officer, with regard to the first charge and had come to the conclusion that all the charges against the petitioner had been proved beyond doubt. The dissent note had been recorded by the disciplinary authority and it had been sent to the petitioner. The petitioner was given sufficient opportunity to put forth his case, both before the enquiry officer, as well as the disciplinary authority. The petitioner had availed the opportunities given to him, without any protest. The grounds raised by the petitioner before this Court had not been raised by him at the earlier stages, even though he had sufficient opportunity to do so. All the relevant documents had been given to the defence representative of the petitioner.

17. It has been further stated that the petitioner had not shown that substantial prejudice had been caused to him due to the delay in the holding of enquiry proceedings against the petitioner and in the disposal of the appeal. There has been no mention of the delay in the reply submitted by the petitioner, dated 13.10.1999, at the time when the charges had been levelled against him. Further, there is no prejudice caused to the petitioner due to the fact that the manager of the Bank had not been charged with misconduct. The petitioner has merely stated that the relevant documents had not been furnished to him. He had not specified the documents which were not supplied to him or to his defence representative. Unless prejudice is shown to have been caused and unless it goes to the root of the matter it cannot be stated that the procedures followed by the respondents, in imposing the punishment, would be arbitrary and illegal. In fact the Rules governing the service of the petitioner had been followed and the respondents have the necessary power and jurisdiction to impose the appropriate penalty on the petitioner. The penalty imposed on the petitioner cannot be said to be disproportionate in nature to the charges proved

against him. A reading of the State Bank of India Officers' Service

Rules, 1992, do not show that the petitioner would have the privilege of filing a written brief after the enquiry officer had made his report. In such

circumstances, the writ petition filed by the petitioner cannot be sustained in the eye of law.

18. The learned Counsel appearing for the respondent had relied on the following decisions in support of his contentions:

18.1. In *Union Bank of India v. Vishwa Mohan* 1998 (4) SCC 310, the Supreme Court had held that if the enquiry report had not been supplied

to the delinquent employee before the penalty had been imposed by the disciplinary authority, but if it had been made available to the charged

employee before he had submitted the appeal and if the employee had an opportunity to assail the enquiry report in the appeal, and if no prejudice

is shown to have been caused to the employee, the non-supply of the report before the imposition of the penalty by the disciplinary authority would

not vitiate the enquiry.

18.2. In *The High Court of Judicature at Bombay v. Shashikant S. Patil* 1999 L.I.C. 3833, the Supreme Court had held as follows:

Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if

such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of

such inquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion

made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or

grounds very similar to the above. However, it cannot be overlooked that the departmental authority is the sole judge of the facts, if the inquiry has

been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or

even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.

18.3. In *Canara Bank v. Shri Debasis Das and Ors.* AIR 2003 SCW 1561, it was held that the delinquent has to show that prejudice had been

caused if the enquiry officer had made his report before the filing of the written

brief. Moreover if a personal hearing has been given to the delinquent by the Appellate Authority it would be sufficient post decisional hearing and therefore, there would be no violation of the rules of natural justice.

18.4. In *Canara Bank Vs. V.K. Awasthy*, the Supreme Court had held that the employee need to show that prejudice had been caused due to lack of pre-decisional hearing. If adequate post decisional hearings were granted, including a personal hearing by the Appellate authority and an opportunity to challenge the findings of the enquiry officer as well as the disciplinary officer, there would not be any violation of any principles of natural justice. In such circumstances, useless formality theory would apply where recourse to the principles of natural justice does not improve the situation.

19. In view of the contentions raised on behalf of the petitioner, as well as the respondents and the decisions cited and on a perusal of the records available, this Court is of the considered view that the petitioner has not shown sufficient cause or reason to interfere with the impugned orders passed by the respondents, imposing the penalty of "Reduction in basic pay by two stages for two years with the period of suspension treated as such" on the petitioner. The petitioner has not been in a position to show that substantial prejudice had been caused to him by the delay caused in the framing of charges and the initiation of the enquiry proceedings on the charges levelled against him or in the disposal of the appeal filed by the petitioner before the first respondent Appellate Authority.

20. It has not been shown by the petitioner that he was not given a reasonable opportunity to defend himself against the charges. Further, it is seen that the relevant records, relating to the issues involved in the case, had been furnished to the petitioner through his defence representative. The enquiry report had been given to him and he had an opportunity to submit his explanation, with regard to the findings of the enquiry officer. It cannot be said that the opportunity granted to the petitioner, by the disciplinary authority, was a mere formality. Further, the petitioner had availed the opportunity of challenging the impugned order of the second respondent, by way of an appeal, before the first respondent appellate authority.

The petitioner has not shown that he had questioned the delay in the framing of

the charges against him and in the conducting of the enquiry based on the said charges, at the earliest point of time. After this Court had directed the first respondent to dispose of the appeal filed by the petitioner, on merits, the question of delay would not arise at the stage of the disposal of the appeal. The punishment imposed on the petitioner cannot be said to be disproportionate to the charges levelled against him.

21. Merely for the reason that the manager of the Bank had not been proceeded against for the alleged misconducts, as was done in the case of the petitioner, it cannot be said that the petitioner would be prejudiced by such inaction on the part of the respondents. If the disciplinary authority has sufficient reasons for differing from the findings of the enquiry officer, such an option exercised by the disciplinary authority cannot be said to be prejudicial or malafide in nature, unless it is clearly shown that the decision of the disciplinary authority is perverse or based on no evidence or that it was arbitrary or malafide in nature. Since the petitioner has not been able to establish his claims, this Court finds no cause or reason to grant the reliefs, as prayed for by the petitioner, in the present writ petition. Hence, the writ petition stands dismissed. No costs.