
(1992) 06 AP CK 0019

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4939 of 1992

B. Suresh Babu

APPELLANT

Vs

Kakathiya Grameena Bank, Hanamkonda and another

RESPONDENT

Date of Decision : 25-06-1992

Acts Referred:

Citation : (1999) 4 ALD 116

Hon'ble Judges : R. Ramanujam, J

Bench : Single Bench

Advocate : Mr. V. Venkata Ramana, for the Appellant; Mr. K. Srinivasa Murthy, SC for Grameena Bank, for the Respondent

Judgement

1. Two short, but important questions in the field of service law, arise for consideration in this writ application. They are:

(i) Whether the disciplinary authority can differ with the findings of the enquiry officer - holding the delinquent not guilty - on all or some of the charges without giving an opportunity to the delinquent officer? and;

(ii) If an opportunity is required to be given, is it necessary to supply a copy of the enquiry officer's report to the delinquent officer?

2. The facts that gave rise to these questions, in brief, are:

The petitioner was appointed as a Clerk-cum-Cashier in the 1st respondent-Bank in the year 1985. During the year 1989 he was working in Azamnagar branch as a Clerk-cum-Cashier. Besides him there was a Branch Manager in that branch. Both of them were joint custodians of cash and safety vault. On 10-7-1989 the Administrative and Audit Officers of the 1st respondent-Bank inspected that branch and found certain irregularities. The petitioner was called upon to explain and he did. Not satisfied with his explanation, the 1st respondent-Bank issued a charge-sheet to the petitioner on 4-1-1990, whereunder the following three charges were framed :

"(a) That, you have not reported to Head Officer, in time, about the absence of the Branch Manager from 8-7-1989 and thereby failed to protect the Banks interest.

(b) That, you were found negligent in keeping cash amounting to Rs.11,301.50 ps., from 8-7-1989 to opening of business on 10-7-1989 and Rs.15,546.50 ps., as at the close of business on 10-7-1989 in your personal custody being one of the joint custodian and once again failed to protect the Bank's interest.

(c) That, you also paid cash for the undernoted debits to charges/suspense account without being passed by the Branch Manager :

Charges debit for Rs.113.40 dated 8-7-1989

Suspense debit for Rs.750/- dated 8/10-7-1989. That the above said acts are in gross violation of Kakathiya Grameena Bank Staff Service Regulation No. 19 read with Section 30(1)".

3. The petitioner submitted his explanation thereto on 30-1-1990. The Chairman of the 1st respondent-Bank then appointed an enquiry officer to conduct and enquiry into those charges. Thereafter the enquiry officer conducted oral enquiry on 1-8-1990 and on 29-8-1990. He submitted his report to the Chairman of the 1st respondent-Bank (Disciplinary Authority), holding the petitioner guilty of charges 1 and 3 and partly exonerating him of charge No.2. The relevant portion of the said report is as under :

"In view of the foregoing, I am of the opinion that the employee is guilty of alt the charges except the charge that the employee found negligent in keeping cash amounting to Rs.11,301.50 ps. from 8-7-1989 to opening of business on 10-7-1989 as the cash balance was not verified by any one at the opening of business on 10-7-1989".

Thereupon, on 7-3-1991 the Disciplinary Authority issued the impugned punishment order imposing the penalty of stoppage of one increment by cancellation.

4. Against the said punishment order, the petitioner filed an appeal to the appellate authority and that was rejected on 23-8-1991.

5. The petitioner then filed this writ petition challenging the validity of the punishment order dated 7-3-1991 as confirmed in the appeal.

6. A perusal of the punishment order clearly shows that even though the enquiry officer partly exonerated the petitioner of Charge No.2, the disciplinary authority held him guilty of all the charges. This is clear from the conclusive portion of para 4 of the order, which is as under :

"In the circumstances, I hold the employee guilty of all the charges levelled against him."

Admittedly, before issuing the said punishment order, a copy of the enquiry

officer's report was not supplied to the petitioner. As per the averment in the counter-affidavit filed on behalf of the respondents, the same was served on him on 12-3-1991, i.e., day after receipt of punishment order by the petitioner on 11-3-1991.

7. From a perusal of the impugned punishment order it would also be clear that the disciplinary authority did not even record any reasons for differing with the findings of the enquiry officer on Charge No.2. He did not even state that he is differing with the findings of the enquiry officer.

8. At this juncture it is appropriate to clear one factual aspect. The learned Counsel for the respondents referring to para 4 of the punishment order, submits that the disciplinary authority has not differed with the findings of the enquiry officer. The relevant portion from para 4, referred to by the learned Counsel for the respondents, is as follows :

"..... The Enquiry Officer has found the employee guilty of all the charges levelled against him. I, therefore, agree with the findings of the enquiry officer for the following reasons."

The said statement is factually incorrect. As already noted, the enquiry officer has exonerated the petitioner partly of Charge No.2. But in the conclusive portion of his order, the Disciplinary Authority has found him guilty of all the charges. Had he agreed with the enquiry officer, he would not have held the petitioner guilty of all the charges. It is, thus, clear that the disciplinary authority differed from the findings of the enquiry officer without stating so. The disciplinary authority did not give any prior opportunity to the petitioner before recording his disagreement.

9. In the above stated factual background, I will now consider the two questions that arise in this case :

Question No. 1 :

Before the decision of the Supreme Court in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, , conflicting views were expressed, on this issue, by different Benches of two Judges of the Supreme Court. The view expressed in : (i) State Bank of India v. S.S. Koshal, 1994 Suppl. (2) SCC 468 : AIR 1994 SCW 2901 ; (ii) in State of Rajasthan Vs. M.C. Saxena, is that while disagreeing with the findings of the enquiry officer, the disciplinary authority should record his reasons, but it is not necessary to give an opportunity of hearing to the delinquent. A contrary view was expressed in : (i) Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, ; and (ii) Ram Kishan Vs. Union of India and others, . To resolve this conflict, the issue was referred to a larger Bench of three Judges in Punjab National Bank v. Kunj Behari Misra, and Chief Personal (Disciplinary Authority), Punjab National Bank and others v. Shanti Prasad Goel (Civil Appeal Nos.1884 of 1993 with 7433 of 1995) (supra). The larger Bench rendered its Judgment on 19-8-1998 resolving the conflict.

10. it is appropriate here to state, briefly, the facts of the above stated two Civil Appeals :

11. In both the cases the Punjab National Bank is the appellant. Its Officers, Mr. Mishra is the respondent in the first case and Mr. Goel is the respondent in the second case. Departmental enquiry was conducted against them for certain alleged misconduct. After conducting detailed enquiry, the enquiry officer submitted his reports holding Sri Mishra guilty of the first charge and exonerating him of charges two and six. Sri Goel was exonerated of all the charges. However, without giving any opportunity of being heard, the disciplinary authority - The Regional Manager of the Bank - differed with those findings of the enquiry officer, in both the cases, by recording short reasons, and imposed the penalty of proportionate recovery of the alleged loss of Rs. 1.00 lakh. When their appeals to the appellate authority proved futile, Sri Mishra and Sri Goel filed two writ petitions before the Lucknow Bench of Allahabad High Court contending, inter alia, that the disciplinary authority had grossly erred in differing with the conclusions of the enquiry officer without giving an opportunity to them. That contention was accepted by the High Court and the writ petitions were allowed.

12. Against those orders of the Allahabad High Court, the aforesaid two Civil Appeals were filed by the Punjab National Bank.

13. It is appropriate to note here that Punjab National Bank Officer Employees (Discipline and Appeals) Regulations, 1977, like the Staff Regulations of the 1st respondent-Bank herein, do not require giving an opportunity of being heard to the delinquent before the Disciplinary Authority differed with the findings of the enquiry officer, which are in favour of the delinquent officer.

14. Considering the opposing view points expressed in the earlier decisions of the two Judges' Benches, referred to above, and following, at times explaining, the ratio of the Constitutional Bench decision of the Supreme Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , the larger Bench resolved the conflict by holding that :

(i) whenever the disciplinary authority disagrees with the finding of the enquiry officer on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent; and

(ii) the principles of natural justice have to be read in to the relevant Service Regulations providing for such an opportunity.

See para 19 at page 2721 of the Punjab National Bank's case (supra).

Question No.2 : Reiterating the principle laid down in Union of India and others Vs. Mohd. Ramzan Khan, , a Constitutional Bench of the Supreme Court in B. Karunakar's case (supra) laid down the law on this aspect thus :

"29. Hence, it has to be held that when the enquiry officer is not the disciplinary

authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."

"30. Hence, the incidental questions raised above may be answered as follows :

(i) Since the denial of the report of the enquiry officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rule do not permit the furnishing of the report or are silent on the subject.

(ii).....

(iii) Since it is the right of the employee to have the report to defend himself effectively, and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the report or not, the report has to be furnished to him.

(iv) In the view we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan case (supra) should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly."

This aspect was further made clear by the recent Judgment of the three Judges' Bench of the Supreme Court in Punjab National Bank's case (supra), wherein it was held that a copy of the enquiry Officer's report has to be made available to the delinquent officer before the disciplinary authority records his findings differing with the enquiry officer.

15. It is appropriate now to extract the conclusive portion of the said decision, which reads thus :

"The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file representation before the disciplinary authority records its findings on the charges framed against the officer"

Thus, both the questions referred to above are no longer *res Integra*, but are concluded in favour of the delinquent officer by the authoritative pronouncement of the Supreme Court in *Punjab National Bank's case* (*supra*).

16. In view of the clear legal position, the impugned order, which was issued after the date of Judgment of the Supreme Court in *Union of India v. Mohammed Ramzan Khan*, (*supra*), is unsustainable. But a spirited argument was addressed by the learned Counsel for the respondents contending that : (a) no prejudice was caused to the petitioner by non-supply of the enquiry report; and (b) the contention of the petitioner that the disciplinary authority has not given a notice before disagreeing with the findings of the enquiry officer was not raised in the affidavit filed by the petitioner in support of his petition.

17. Relying upon the guidelines laid down by the Constitutional Bench in *B. Karunakar's case* (*supra*), the Counsel for the respondents submits that no prejudice was caused to the petitioner by non-supply of the enquiry officer's report.

18. There is no merit in this contention. The Constitutional Bench in *B. Karunakar's Case* (*supra*) issued guidelines in para 31 of the report as to how the Courts/Tribunals should consider the cases where the enquiry officer's report is not supplied to the delinquent and; how to mould the relief. As per these guidelines, the Courts or Tribunals should examine, on the facts of each case whether prejudice was caused to the delinquent due to non-supply of the enquiry report. There is nothing in those guidelines indicating that such a course has to be adopted even in cases where the disciplinary authority differed with the findings of the enquiry officer without furnishing a copy of enquiry report to the delinquent. That question was now answered in *Punjab National Bank's case* (*supra*), wherein the Apex Court confirmed the order of the High Court granting the relief without going into the question whether prejudice was caused to the delinquent officer or not. In that case it was clearly laid down that in all cases where the disciplinary authority proposes to differ with the findings of the enquiry officer, the report of the enquiry officer must be supplied to the

delinquent employee along with the show-cause notice.

19. In the present case, the disciplinary authority has differed with the findings of the enquiry officer without giving any notice and without supplying the enquiry officer's report. Had the enquiry officer's report was made available to the petitioner, at that stage, the petitioner would have certainly made his representations stating that the disciplinary authority should not differ with the findings of the enquiry officer. That opportunity was denied to him. This has certainly prejudiced his case.

20. The decision of the Supreme Court in S.K. Singh Vs. Central Bank of India and Others, , relied upon by the respondents Counsel does not also lend any support, as it is not a case of disciplinary authority disagreeing with the findings of the enquiry officer.

21. The other decision of the Supreme Court in State Bank of Patiala and others Vs. S.K. Sharma, , which was relied upon by the respondents' Counsel has no application to the facts of the present case. That case does not concern itself with the non-supply of enquiry officer's report by the disciplinary authority before differing with the findings of the enquiry officer, but relate to non-supply of certain documents during the enquiry.

22. The second contention of the respondent's Counsel is also equally untenable. Though the petitioner has not stated specifically in his affidavit, the first question referred to above clearly arises on the facts of this case and as such the petitioner can urge the same at the time of hearing.

23. For the foregoing reasons, the impugned punishment order issued by the Chairman of the 1st respondent-Bank in his proceedings No.PER/KGB/DPC/4/91, dated 7-3-1991 as confirmed by the appellate authority in its order dated 23-8-1991 is unsustainable. Therefore, a writ of certiorari is issued quashing the same. However, this order will not preclude the Disciplinary Authority, if it is so advised, to proceed with the enquiry from the stage after receiving the Enquiry Officer's Report, in accordance with law.

24. The Writ Petition is accordingly allowed. No costs.