

(1994) 02 AP CK 0033

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2894 of 1989

B. Vasantha Kumar

APPELLANT

Vs

Chairman Kakatiya Grameena Bank Warangal District and
Another

RESPONDENT

Date of Decision : 25-02-1994

Acts Referred:

Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 22(2)

Citation : (1994) 2 ALT 616 : (1994) 2 APLJ 128

Hon'ble Judges : P. Venkatarama Reddi, J

Bench : Single Bench

Judgement

1. This writ petition was filed seeking to quash the order dated 12.8.1988 passed by the first respondent dismissing the petitioner from the service of the Kakatiya Grameena Bank, wherein the petitioner was working as Branch Manager. On appeal to the Board of Directors, the penalty of dismissal was confirmed and the appeal was rejected on 15.11.1988. During the pendency of the writ petition, the petitioner filed an application to implead the Board of Directors as the respondent and the same was ordered by this Court on 25.8.1992. The petition seeking amendment of the prayer to set aside the appellate order dt. 15.11.1988 was also ordered by this Court on the same date.

2. The learned counsel for the petitioner has challenged the order of dismissal on various grounds - some of which are not specifically raised in this writ petition. However, it is not necessary for me to consider these arguments and express a view on the merits of the case, having regard to the fact that I am accepting the principal contention advanced by the learned counsel for the petitioner that the appellate order is bad in law.

3. It is submitted by the learned counsel for the petitioner that the appellate order is vitiated by reason of failure to spell out any reasons. Under Regulation 31(2) of the Staff Service Regulations, 1983 framed by the Kakatiya Grameena Bank, the appellate authority "shall consider whether the findings of the

disciplinary authority are justified and whether the penalty imposed is adequate and pass suitable orders as early as possible". The resolution of the Board of Directors rejecting the petitioner's appeal reads as follows :

"The Board, after careful consideration of all the aspects of the case and the appeal preferred by Sri B. Vasantha Kumar, decided to confirm the punishment of dismissal from service imposed by the disciplinary authority."

Thus, indisputably the appellate order is bald and it does not spell out any reasons. What all we get from the said order is that the Board of Directors have decided to confirm the punishment imposed by the disciplinary authority.

4. In *Ram Chander v. Union of India* 1986 II CLR 10. The Supreme Court while considering more or less as similar provision as to appeal in the context of the Railway Servants (Discipline and Appeal) Rules observed :

"The word "consider" has different shades of meaning and must in Rule 22(2), in the context in which it appears, mean an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision."

The Supreme Court then pointed out in paragraph 23 as follows :

"It is not necessary for our purposes to go into the vexed question whether a post decisional hearing is a substitute of the denial of right of hearing at the initial stage or the observance of the rules of natural justice since the majority in *Tulsiram Patel's* case 1985 II CLR 117 unequivocally lays down that the any stage at which a Government servant gets "a reasonable opportunity of showing cause against the action proposed to be taken in regard to him" i.e., an opportunity to exonerate himself from the charge by showing that the evidence adduced at the inquiry is not worthy of credence or consideration or that the charges proved against him are not of such a character as to merit the extreme penalty of dismissal or removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case, is at the stage of hearing of a departmental appeal. Such being the legal position, it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in *Tulsiram Patel's* case that the Appellate Authority must not only give a hearing to the Government Servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process."

5. The procedure for holding disciplinary enquiry and imposition of penalty as laid down in Staff Service Regulations of the Bank substantially accords with the constitutional provisions embodied in Article 311(2), as brought about by the Forty-Second Constitutional Amendment and the Railway Servants (Discipline and Appeal) Rules which the Supreme Court had occasion to consider. The Supreme Court also referred to various judgments wherein it was laid down that

in a case of affirmance, where the original tribunal gives adequate reasons, the appellate tribunal can dismiss the appeal agreeing with those reasons. The Supreme Court did not apply the principle laid down in those decisions having regard to the language employed in the relevant rule wherein the obligation to "consider" the matters indicated in the rule was cast upon the appellate authority.

6. The learned counsel for the respondent - Bank however relied upon a recent constitutional Bench judgment of the Supreme Court in *S.N. Mukherjee Vs. Union of India*, , the Supreme Court observed after reviewing the earlier cases other than *Ram Chander*'s case as follows :-

"What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge."

Whether the judgment in *Ram Chander*'s case (supra) rendered by the Supreme Court in the context of Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules remains unaffected by the law laid down by the Supreme Court in *S. N. Mukherjee*'s case (supra) is perhaps a debatable point and I do not propose to express my view on this aspect. Even going by the aforementioned observations of the Supreme Court in *S. N. Mukherjee*'s case (supra), I do not think that the appellate order in the present case can be sustained. What all had been stated in the appellate order is that the Board of Directors on a consideration of all the aspects have decided to confirm the penalty of dismissal. Neither the findings nor the reasons given by the disciplinary authority have been referred to even briefly and the concurrence with those reasons was expressed in the order. There is nothing to show that the appellate authority addressed itself to the points raised in the appeal and the reasoning of the disciplinary authority was adopted to overrule those points, though not independent reasoning of its own. At best, we find from the order that the appellate authority thought it fit to confirm the punishment and it does not follow by necessary implication that the appellate authority considered the question whether the findings of the disciplinary authority were justified on the basis of the evidence on record. At any rate, it is not possible to infer so on a reading of the appellate order. It may be that the appellate authority need not give separate reasons in a case of affirmance. But, at least there must be something to show that the appellate authority did consider the dual aspects mentioned in Regulation 31(2) and adopted the reasoning of the disciplinary authority to overrule the points made out in the appeal. This is the least that is expected of the appellate authority which discharges quasi-judicial functions. Thus, even on strict application of the principle laid down in *S. N. Mukherjee*'s case (supra), I am of the view that the appellate authority's order is vitiated on account of being bald and cryptic. The appellate order is, therefore, liable to be set aside and accordingly I do so and

direct the appellate authority to consider the appeal de novo and pass the order afresh in the light of the observations made in this judgment. It is open to the petitioner to raise any supplemental grounds before the appellate authority within a period of four weeks from today. In view of the observations in Ram Chander's case (*supra*), I would like to observe that in order to avoid unnecessary controversy in the matter, it is desirable to afford an opportunity of personal hearing to the petitioner if he desires to be heard in person. The appellate authority shall dispose of the appeal within three months from the date of receipt of this order.

7. This writ petition is partly allowed to the extent indicated above. No costs.

8. I would like to make it clear that the order of the disciplinary authority has not been disturbed by me and it remains in tact until and unless set aside or modified by a competent authority or forum.