

(2017) 03 KAR CK 0251
In the Karnataka High Court
Case No : 6527 of 2013

C. M. Shashikanth

APPELLANT

Vs

Karnataka State of Financial Corporation, Bengaluru & Ors.

RESPONDENT

Date of Decision : 21-03-2017

Acts Referred:

[Maharashtra Civil Services \(Disciplinary and Appeal\) Rules, 1979](#), Rule 9(2), Rule 11-A

Citation : (2017) 03 KAR CK 0251

Hon'ble Judges : A.N. Venugopala Gowda

Bench : SINGLE BENCH

Advocate : Subramanya Bhat, Subba Rao, Gururaj Joshi

Judgement

1. The petitioner was appointed as Deputy Manager (Tech.) in the respondent " " Corporation in the year 1991 and was promoted as Manager (Tech.) in the year 2003. The petitioner was served with a show-cause notice on 10.06.2005 in the matter of financial assistance extended to M/s. Precitech Engineering, a partnership firm. A reply was submitted on 20.07.2005. Charge-sheet dated 28.09.2007 was served upon the petitioner containing the following charges; (i) That you have failed to collect the original invoices from the loanee while appraising the loan proposal. (ii) Though you have inspected the unit have failed to furnish the inspection report and valuation of the machinery acquired by the loanee. This resulted, in releasing the loan amount to the loanee without any proper security. (iii) That the DM(L) specifically noted a condition that before release of balance of Rs.60.00/- lakhs the party should produce the original title deeds of the land and building or the collateral security titles acceptable to the Corporation. However, the entire balance of the loan was released without collecting either of this. Hence, the conditions subject to which the legal clearance given were overlooked. (iv) That the entire releases were made without collecting the original sale deed and original invoices even though the legal officer has clearly stated that the original sale deed should be collected before the releases. (v) The condition as to the production of sale deed should

have been followed up by you as you were the disbursement officer before making the subsequent releases. However, this has not been done. (vi) That failure on your part to collect the original sale deed from the loanee has resulted in the Corporation having no collateral security to recover the huge liability from the loanee. (vii) The copies of invoices collected were inflated ones and some of the machineries stated to have been supplied were not at all manufactured by the supplier, which shows that you have not properly verified the invoices at the time of appraisal as well as before releases were made. The petitioner submitted his reply on 02.11.2007 and denied all the allegations. As the Disciplinary Authority was not satisfied with the reply, a retired District and Sessions Judge was appointed to conduct Disciplinary Inquiry. After conducting and concluding inquiry, Inquiry Officer submitted a report dated 6-8-2010 exonerating the petitioner from the charges. Inquiry Officer recorded the finding that the case against the petitioner as unproved. Managing Director of the Corporation served show-cause notice dated 27.01.2011 and the petitioner was notified that the Board of Directors after protracted discussions on the subject disagreed with the findings of the Inquiry Officer. Copy of the Board proceedings dated 23.11.2010 and the Inquiry Officer's report was enclosed to the said show-cause notice. Explanation to the said show-cause notice was submitted by the petitioner on 04.03.2011. The Board of Management of the Corporation having arrived at the decision that there is grave irregularity committed by the petitioner and thus jeopardised the interest of the Corporation, on 01.08.2011, resolved to impose the penalty of withholding of two increments with cumulative effect and a communication was served in that regard on the petitioner. Assailing the said action, the explanation in the form of an appeal vide Annexure-N having been submitted the Disciplinary Authority by an order dated 25.01.2012, modified the penalty to withholding of one increment with cumulative effect. Feeling aggrieved, the petitioner filed this petition to quash the orders dated 01.08.2011 and 25.01.2012, as at Annexures-M and P respectively. 2. Sri. Subramanya Bhat, learned Advocate contended that there is breach of sub-Rule (3) of Rule 11- A by the respondent. He submitted that the Inquiry Officer who conducted and completed the Inquiry having exonerated the petitioner from all the charges and the report submitted being a well considered one by appreciation of the entire material placed on record of the inquiry, no reasons for disagreement was made out and furnished to the petitioner i.e., to make his representation. He submitted that the format vide Annexure-1, enclosed to the show-cause notice dated 27.01. 2011 does not meet the mandatory requirement of Sub-rule (3) of Rule 11-A. He contended that the petitioner having submitted the explanation on 04.03.2011, without any application of mind, mechanically the penalty was imposed. He further submitted that the Disciplinary Authority without examination of the explanation submitted vide Annexure-N in the manner contemplated in law, has passed the non- speaking order dated 25.01.2012. He contended that the respondent having failed to consider the case in the correct perspective, impugned orders suffer from fatal defects and the findings entered therein, unsupported by any evidence being perverse, there is gross miscarriage of

justice. He submitted that there is no due and proper application of mind and both the orders are bad in law, as the reply submitted has not received consideration in accordance with law by the Disciplinary Authority. 3. Per contra, Sri. Gururaj Joshi, learned advocate defended the impugned orders by contending that there is no requirement for serving the reasons recorded to the petitioner and that the order dated 01.08.2011 and 25.01.2012 being justified, no interference is called for. Alternatively, he submitted that even if there is any infirmity in the orders passed against the petitioner, liberty be reserved to the respondent for doing the needful afresh. 4. Perused the record and considered the rival contentions. Point for consideration is, whether there is flaw in the matter of imposition of punishment by the respondent? 5. Rule 11-A is with regard to action on the Inquiry Report. It provides for four kinds of orders to be passed by the Disciplinary Authority after receiving the report of the Inquiry i.e., by recording the reasons: (i) Remit the case to the Inquiry Authority; (ii) Record reasons for disagreement and record its own findings on the charges, if the evidence on record is sufficient for the purposes and communicate the reasons for such disagreement; (iii) Impose one or more of the penalties specified in Rule 8; (iv) Exonerate the employee. 6. Rule 11-A (3) makes it clear that where the Disciplinary Authority disagrees with the findings of the Inquiring Authority on any article of charge, it must record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purposes and communicate the reasons for such disagreement to the employee to make his representation if any in the matter and consider the same before taking any decision to impose the penalty. Sub- Rules (3) and (4) of Rule 11-A have to be read together. When so read, it is clear that they have been made only with a view to provide an opportunity to the employee to represent against the findings, which can be termed as "tentative- of Disciplinary Authority, to the extent they are adverse to him. If explanation is submitted, it becomes mandatory for the Disciplinary Authority to meaningfully consider the explanation and pass order in exercise of the power conferred under Rule 11-A (4). 7. The respondent is an instrumentality of the State and is expected to act in fairness by following the principles of natural justice, meaning thereby, that in case an oral hearing is not allowed, the explanation submitted should receive due consideration of the Disciplinary Authority. 8. Annexure-1 enclosed to the show-cause notice dated 27.01.2011 (proceedings of Board Meeting held on 23.11.2010), in the form of a table with headings "Gist of Charges; Findings of I.O.; Observations of the Board and the penultimate portion with a heading "General observations of the Board- as rightly contended by Sri. Subramanya Bhat does not comply with sub-Rule (3) of Rule 11-A, as the Disciplinary Authority has not recorded its reasons for the disagreement with the findings of the I.O. and has not recorded its own findings charge-wise. The Table - Annexure-1 appears to be para-wise comments and not recording of the Disciplinary Authority reasons for such disagreement nor the findings of the Disciplinary Authority charge-wise. Thus, Annexure-1 to the show-cause notice dated 27.01. 2011 is only a farce of compliance. 9. There is no dispute with

regard to submission of reply dated 04.03.2011 by the petitioner to the show-cause notice dated 27.01.2011 served on him by the Managing Director. The order dated 25.01.2012 makes it clear that the Disciplinary Authority by taking note of the said explanation of the petitioner has concluded as follows:- "In his appeal the CSO referred the inquiry proceedings and claimed that he has not committed any lapse while discharging his duties. Further, he also states that the IO has held that the CSO inspected that unit along with the DGM and prepared the memorandum for sanction of the loan. He had also seen the proposed machinery and the original invoices taken by the DGM and verification of invoices is the purview of the finance officer. The Board noted that the submission of CSO in his appeal goes to show that he has failed to collect the original invoices and verify the same while inspecting the plant and machinery at the time of sanction. The Board felt that this argument of the CSO cannot be accepted. He cannot shirk his responsibility stating that he had inspected the unit along with the DGM and original invoices are collected by the DGM. As a Deputy Manager (Tech) in-charge of inspection, sanction portfolio, it was his responsibility to ensure collection of original invoices and correctness of the valuation of plant and machinery. Since he failed to collect the original invoices and valued the plant and machinery while appraising the loan proposal the Corporation could not take recovery action for sale of plant & machinery. However, taking into account the facts and circumstances of the case, the Board decided to prune down the punishment of with holding of 2 (two) increments with cumulative effect imposed earlier and to reduce the said punishment to 1 (one) increment with cumulative effect... .. " It is apparent that the said explanation of the petitioner has not received meaningful consideration and has been brushed aside without assigning valid reasons. There is neither appreciation of the evidence nor recording of reasons in support of the conclusion. Thus, the Disciplinary Authority has faulted in discharge of its duty as per Rule 11-A and illegally imposed the punishment on the petitioner. 10. Despite exoneration of the petitioner by Inquiring Authority, without recording any reasons for disagreement with the findings recorded by the Inquiring Authority and recording the reasons of the Disciplinary Authority on the seven charges levelled against the petitioner, the aforesaid order was passed and the petitioner imposed with the penalty, which is arbitrary. The action of the respondent after receipt of the Inquiry Report being in breach of sub-Rule (3) of Rule 11-A, the impugned orders are illegal. 11. In Punjab National Bank v. Kunj Behari Misra (1998) 7 SCC 84 : (AIR 1998 SC 2713), Apex Court by considering Regulation 7(2) of the Punjab National Bank Officer Employees- (Discipline and Appeal) Regulations, 1977 which did not provide for giving of any notice before Disciplinary Authority differed with the finding of the Inquiry Officer, has held as follows:- "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 Enquiry 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 Enquiry 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 Enquiry 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 a representation before the disciplinary authority records its findings on the charges framed against the officer." (Emphasis supplied) 12. In *Yoginath D. Bagde v. State of Maharashtra* (1999) 7 SCC 739 : (AIR 1999 SC 3734), Apex Court noticing the scope of Rule 9(2) of the Maharashtra Civil Services (Disciplinary and Appeal) Rules, 1979 which did not specifically provide for the Disciplinary Authority to give an opportunity to the petitioner before differing with the finding, has held as follows:- "But the requirement of " hearing- in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before the Disciplinary authority finally disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has to communicate to the delinquent officer the " TENTATIVE- reasons for disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of " not guilty- already recorded by the enquiring authority was not liable to be interfered with." (Emphasis supplied) 13. In the case of *Ranjit Singh v. Union of India*, reported in (2006) 4 SCC 153 : (AIR 2006 SC 3685), in the Departmental Proceedings, the Inquiry Officer submitted report exonerating the appellant from the charges. The Disciplinary Authority however differed with the findings of the Inquiry Officer and issued a memorandum stating the reasons for disagreeing with the Inquiry Officer and called upon the appellant to make a representation in defence to the ground of disagreement before a final decision is taken. Appellant sought 10 days- time and the same was allowed. Again he prayed for further time and the same was also allowed. Another application was filed seeking extension of time which was not granted as the Disciplinary Authority already prepared the order. Considering the matter in the aforesaid background, Apex Court has held as follows:- "22. In view of the aforementioned decisions of this Court, it is now well settled that the principles of natural justice were required to be complied with by the disciplinary authority. He was also required to apply his mind to the materials on record. The Enquiry Officer arrived at findings which were in favour of the appellant. Such findings were required (sic sought) to be overturned by the disciplinary authority. It is in that view of the matter, the power sought to be exercised by the disciplinary authority, although not as that of an Appellate Authority, but is akin thereto. The inquiry report was in favour of the appellant but the disciplinary authority proposed to

differ with such conclusions and, thus, apart from complying with the principles of natural justice it was obligatory on his part, in the absence of any show-cause filed by the appellant, to analyse the materials on record afresh... " (Emphasis supplied) 14. In *Mathura Prasad v. Union of India* (2007) 1 SCC 437 : (AIR 2007 SC 381), it was held, that when an employee by reason of alleged act of misconduct is sought to be deprived of the livelihood, the procedure laid down under the Sub-Rules is required to be strictly followed and it has been further held as follows:- "19... .. It is now well settled that a judicial review would lie even if there is an error of law apparent on the face of the record. If statutory authority uses its power in a manner not provided for in the statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may attract the principles of judicial review." 15. In the present case, Disciplinary Authority has not communicated to the petitioner the " tentative reasons- for disagreeing with the findings of Inquiring Authority nor has " recorded its own findings- on the charges levelled against the petitioner i.e., when the communication dated 27.01.2011 was served on the petitioner. Thus, there is breach of sub-Rules (3) and (4) of Rule 11-A, which amounts to violation of principles of natural justice. Consequently, there is flaw in the decision making process by Disciplinary Authority at both stages i.e., Rules 11-A (3) and 11-A (4). In the result, petition is allowed and the impugned orders as at Annexures " " M and P quashed. Liberty is reserved to the respondent to proceed afresh against the petitioner, if found necessary, i.e., from the stage the Inquiry Report was received by keeping in view the observations made supra. No costs. Petition allowed.