

(1999) 06 KAR CK 0035
In the Karnataka High Court
Case No : Writ Appeal No. 3639 of 1998

Canara Bank, Head Office, J.C. Road, Bangalore and Another	APPELLANT
Vs	
M. Ramachandrappa	RESPONDENT

Date of Decision : 03-06-1999

Acts Referred:

Canara Bank Service Code — Section 12 (3), 4 (d)
Central Civil Services (Classification, Control and Appeals) Rules, 1965 — Rule 10 (5B)

Citation : (1999) ILR (Kar) 3112 : (1999) 4 KarLJ 566 : (1999) 2 LLJ 994

Hon'ble Judges : Y. Bhaskar Rao, C.J.; V. Gopala Gowda, J

Bench : Division Bench

Advocate : Sri D.L.N. Rao, for the Appellant; Sri P.S. Rajagopal, for the Respondent

Judgement

Y. Bhaskar Rao, C.J.—The respondents in the writ petition have filed this writ appeal assailing the order of the learned Single Judge allowing the writ petition.

The brief facts of the case are that:

The contesting respondent herein was working as a clerk in the appellant-Bank. He was kept under suspension pending enquiry for misconduct by an order dated 12-1-1977. After conducting the enquiry, the Enquiry Officer submitted a report. The Disciplinary Authority passed an order on 16-9-1981 dismissing the respondent from service of the Bank. Against that order, the respondent filed an appeal. The Appellate Authority allowed the appeal by modifying the order of suspension imposed by the original authority and directed him to be reinstated in the bank service and imposed a punishment of stoppage of four increments with cumulative effect under Chapter XI, Regulation 4(d) of the Canara Bank Service Code. It is submitted that the appellant-Bank has treated the period from the date of dismissal till the date of reinstatement as not on duty and assigned the ranking of the respondent at SI. No. 2 in the seniority list of clerical staff by its order dated 20-12-1988. In the month of May 1990, the respondent, basing on the seniority list prepared by the Bank, approached the Bank to promote him to

the post of Special Assistant in the Bank. The request was negated by the Bank vide order dated 6-6-1990 observing that the period under suspension could not be taken into account while computing the total service as on 1-3-1990 and therefore, his claim for promotion cannot be considered. That order is challenged in the writ petition. Learned Single Judge after considering the material on record and arguments of both sides, allowed the writ petition and set aside the order dated 6-6-1990 and directed the appellant-bank to take into consideration the period between the date of suspension till the date of dismissal as on duty for the purpose of computing the total service as well as the qualifying service for service benefits. It was also held that after taking into consideration that period, if the respondent is eligible for promotion to the post of Special Assistant and to the post of officer, Junior Management Grade, Scale I, the same will be given to the respondent with retrospective effect. That order is challenged in this appeal by the Bank.

2. Learned Counsel for the appellant-Bank contended that the period from the date of suspension till dismissal during which the respondent was under suspension pending enquiry, cannot be taken into consideration for the purpose of counting service as he was under suspension and that period has to be considered according to Regulation 12(3) of the Canara Bank Service Code. The Appellate Authority set aside the order of dismissal on humanitarian grounds and imposed punishment of stoppage of four increments with cumulative effect and no direction is given as to, how to treat the suspension period pending enquiry. In the absence of any such direction and in view of the power provided under Regulation 12(3) of the Regulations, the decision of the original authority has to be considered as to whether the period of suspension has to be treated as in service or not. Therefore, the learned Single Judge erred in directing to take the said period into consideration as in service and to give the benefit to the respondent.

3. Learned Counsel for the respondent contended that the order of dismissal passed by the original authority was set aside in appeal. The suspension order merged in the dismissal order. Once the dismissal order is set aside, the suspension order automatically gets revoked. Therefore, The said period has to be taken into consideration for the purpose of counting of service of the respondent. When there is no specific direction in the order of the Appellate Authority directing the said period not to be taken into account for the purpose of counting service, it cannot be inferred as the said period cannot be taken into account.

4. In view of the rival contentions, the one important question of law that arises for consideration is, whether the order of suspension passed pending enquiry will merge with the dismissal order or not. There is no regulation in this respect in the Service Code of the appellant-Bank. Therefore, we have to depend on the case law on the subject. In H.L. Mehra Vs. Union of India (UOI) and Others, , a question arose whether the order of suspension comes to an end on dismissal of

the employee and on setting aside the dismissal order, or whether the order of suspension revives and continues under the rules - clause (5-b) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Justice Bhagwati speaking for the Court elaborately considered the rival contentions and held that the order of suspension made against the appellant was one made pending enquiry and it was not an order imposing penalty after the enquiry and after enquiry, an order of dismissal was passed as a penalty, and with the order of dismissal, the order of suspension lapses and held that the order of dismissal replaces the order of suspension which has ceased to exist. The Supreme Court referred to the judgments in Gopal Krishna Naidu v State of Madhya Pradesh and AIR 1949 118 (Nagpur) , and after considering the facts of this case held that those decisions will leave no room for doubt as to the correct legal position and the conclusion must therefore inevitably follow that when the order of dismissal is passed on 26-10-1967, the order of suspension dated 11-4-1963 ceased to exist and it did not revive thereafter by subsequent setting aside of the order of dismissal by the first part of the impugned order. In Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others, , the Supreme Court was considering the case of dismissal of an employee of the Institute of Constitutional and Parliamentary Studies. The Supreme Court set aside the order of dismissal. It was argued before the Supreme Court that after setting aside the dismissal order, the suspension imposed on the employee pending enquiry will continue and therefore, the said employee has to continue in suspension until the enquiry is completed. The Supreme Court negated the said contention and held that the appellant shall be deemed to have been restored to service and therefore, is entitled to the salary for the past period. In Om Prakash Gupta Vs. The State of Uttar Pradesh, , the Supreme Court held that where an order of suspension is made against a Government servant pending an inquiry and as the result of inquiry an order of dismissal by way of penalty has been passed, the order of suspension lapses with the order and the subsequent declaration by a Civil Court that the order of dismissal was illegal cannot revive the order of suspension which did not exist.

5. The above judgments of the Apex Court vividly lay down that the order of suspension pending enquiry merges with the order of dismissal. When the dismissal order is set aside by the Appellate Authority or the Civil Court, the order of suspension will not revive.

6. In the present case, there is no dispute that the respondent was kept under suspension pending enquiry and afterwards, dismissal order was passed as penalty. The Appellate Authority set aside the dismissal order and modified the penalty of dismissal with that of stoppage of four increments with cumulative effect. Therefore, after the Appellate Authority's order, the suspension order will not revive as laid down by the Supreme Court. When once the suspension order will not revive, the question of that period not taking into account for the purpose of computing service, for purpose of seniority, promotion or any other benefit as provided under the regulations does not arise.

7. Learned Counsel for the appellant secondly contended that the Appellate Authority can entertain an appeal only against the penalty imposed and the suspension pending enquiry is not a penalty. Therefore, the Appellate Authority has no power to set aside the suspension order. To deal with this contention, it is relevant to go through the relevant provisions of the Act dealing with the appeal. Chapter XI of the Service Code of the appellant-Bank deals with disciplinary action. Regulation 4 deals with the punishment to be imposed on the proof of gross misconduct on the part of the employee. In that, suspension is not mentioned as one of the punishments. Regulation 6 deals with minor punishments to be imposed. Even that does not deal with suspension as one of punishments. Regulation 20 provides for an appeal to the Appellate Authority against the order passed by the disciplinary authority within 45 days. Sub-clause (2) of Regulation 20 empowers the Appellate Authority for calling for relevant records and perusing the grounds of appeal and after calling for such information as he may require, pass such orders as he may think fit in the circumstances of the case. By a reading of Regulation 20(1) and (2) together, it is evident that an appeal lies against an order passed by the disciplinary authority imposing on him any punishment and the Appellate Authority can pass an order after considering the grounds of appeal, relevant records or any other information as it thinks fit in the circumstances of the case. Therefore, the Appellate Authority has got wide powers to pass order. Though suspension is not provided as one of the punishments either major or minor, in a given case where such punishment is imposed, the said order can be challenged under Regulation 20 as it is a punishment. Thus, the Appellate Authority has got vast powers. In the present case, it is a fact that suspension is not imposed as a punishment. As stated supra, the suspension order merged with the dismissal order. The said order is challenged in the appeal and the Appellate Authority set aside that order by modifying the punishment to that of stoppage of four increments with cumulative effect. There is no direction not to treat the period of suspension pending enquiry as a period in service. In the absence of such direction, if the said period has to be treated as not in service, it amounts to amending the order of the Appellate Authority and reducing the part of the order which is not within the purview of the Court nor there is any rule or regulation to that effect that where an Appellate Authority is silent about the suspension period, it has to be deemed that the said period has to be treated as not on duty. In the absence of any such rules or regulations or directions in the order of the Appellate Authority, it cannot be inferred that the said period has to be treated as not on duty. Therefore, we are not able to accede to the contention of the learned Counsel for the appellant. Further, the words "as he thinks fit" were interpreted by the Supreme Court in *Narendra Singh Vs. Chhotey Singh and Another*, . The Supreme Court while interpreting Section 37(2) of the Advocates Act held as:

"The expression "as it deems fit" occurring in Section 37(2) confers a jurisdiction of widest amplitude on the disciplinary committee of the Bar Council of India hearing appeal u/s 37. But, that does not mean that it can pass any order in

total disregard of the statutory provisions under which it is created and is conferred jurisdiction to resolve disputes arising in the implementation of the statute. The Disciplinary Committee of the Bar Council of India is a limb of the Bar Council of India and the Bar Council of India is a creature of the Advocates Act, 1961 on whom the duty to lay down standards of professional conduct and etiquette for Advocates is conferred and is further charged with the duty to safeguard the rights, privileges and interests of Advocates. Therefore, when it is said that the disciplinary committee of Bar Council of India may decide the case "as it deems fit", the order has to be relevant to the functions of the Bar Council of India. The appellate body could exercise the power to vary punishment imposed by Disciplinary Committee of the State Bar Council even if the person aggrieved by mild punishment or Advocate General have not preferred an appeal. It can as well exercise this power in the appeal preferred by the delinquent Advocate. This is what is meant when it is said that disciplinary proceedings against lawyer not only involves the particular lawyer but the profession as a whole".

8. The said principle supports our view. In view of the above stated circumstances, we are not able to accede to the contentions of the learned Counsel for the appellant. We do not see any merit in the appeal.

9. Appeal is accordingly dismissed.