

(2019) 04 BOM CK 0104
In the Bombay High Court
Case No : Writ Petition No. 292 Of 2009

Dinkar Rajaram Sarap

APPELLANT

Vs

Chairman Managing Director And Ors

RESPONDENT

Date of Decision : 18-04-2019

Acts Referred:

Central Bank Of India Officer Employees' (Discipline and Appeal) Regulations, 1976 — Rule 17, 17(4)
Maharashtra Civil Services (Discipline And Appeal) Rules, 1979 — Rule 23(2)

Citation : (2019) 04 BOM CK 0104

Hon'ble Judges : R.K. Deshpande, J; S.M. Modak, J

Bench : Division Bench

Advocate : R.R. Deshpande, N.W. Almelkar

Final Decision : Partly Allowed

Judgement

R.K. Deshpande, J

1. Heard the learned Counsels appearing for the parties.
2. The petitioner was working as a Branch Manager in the Central Bank of India at Kaulkhed, Branch at Akola. He was charge- sheeted for about fifteen charges. The Disciplinary Authority, after holding an enquiry, recorded the findings about the charges having been proved and imposed the punishment of dismissal from service. The Appellate Authority confirmed the order passed by the Disciplinary Authority and the review preferred was also dismissed.

Hence, the present Writ Petition.

3. The main ground of challenge is that the petitioner was not provided an opportunity of personal hearing by the Appellate Authority and no findings are recorded on all the objections raised to the findings recorded by the Disciplinary Authority. It is also urged that the aspect of proportionality of punishment was not considered. Reliance is placed upon Rule 17 of the Central Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976 (hereinafter

referred to as "the Regulations of 1976") and the decision of Full Bench of this Court in the case of Anil Amrut Atre .vs. District and Sessions Judge, Aurangabad reported in 2002(3) Mh.L.J. 750.

4. It is not necessary for us to go into the findings recorded by the Disciplinary Authority or by the Appellate Authority or while dealing with the application for review, as we are convinced that the matter is required to be remanded back to the Appellate Authority to provide an opportunity of personal hearing to the petitioner. Hence, we will have to leave all the challenges open to be considered by the Appellate Authority.

5. Rule 17 of the Regulations of 1976 dealing with appeals is relevant and hence, it is re-produced below :-

"Appeals :

17(1) An officer employee may prefer an appeal to the Appellate Authority within forty five days of receipt of the order imposing upon him any of the penalties or against the order of suspension referred to in Regulation 12.

Provided that the Appellate Authority may entertain the appeal after the expiry of said period, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.

(2) The appeal shall be presented to the Appellate Authority with a copy being forwarded at to the authority which made the order appealed against. It shall contain all material statements and arguments on which the appellant relies but

(3) The authority which made the order appealed against shall on receipt of a copy of appeal from the appellant, forward the same with its comments thereon together with the relevant records to the Appellate Authority within a period not exceeding forty five days from the date of the receipt of the Appeal.

4) Authority shall on receipt of the comments and records of the case from whose order is appealed against, consider whether the order of findings are justified or whether the penalty is excessive or inadequate and pass appropriate orders. The Appellate Authority may pass an order confirming, reducing or setting aside the penalty/suspension or remitting the case to which imposed the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case.

Provided that -

(i) If the enhanced penalty which the Appellate Authority proposed to impose a major penalty specified in Clause (f), (g), (h), (i) and (j) of Regulation 4 and an enquiry as Regulation 6 has not already been held in the case, the Appellate shall direct that such an enquiry be held in accordance with the provision of 16 and thereafter consider the record of the enquiry and pass such orders as it may deem proper.

(ii) If the Appellate Authority decides to enhance the punishment but an enquiry already been held as provided in Regulation 6, the Appellate Authority shall issue show cause notice to the officer employee as to why the enhanced penalty should be imposed upon him and shall pass final order after taking into account representation, if any, submitted by the officer employee.

6. We are concerned essentially with the compliance of Rule 17(4) of the Regulation of 1976, which is re-produced above. It is the right of appeal provided to the delinquent employee and the Appellate Authority is empowered to call for the comments and record of the case from the Authority against whose order appeal has been preferred. It further empowers the Appellate Authority to consider whether the order or the findings recorded are justified or whether the penalty is excessive or inadequate and pass appropriate orders. The Appellate Authority is empowered to pass an order either of confirming, refusing or of setting aside the penalty imposed upon the delinquent employee with such directions as it may deem fit in the circumstances of the case.

7. It is urged by Mr.R.R.Deshpande, learned Counsel for the petitioner relying upon the Full Bench decision of this Court in case of Anil Amrut Atre (cited supra) that the word 'consider' referred to in clause (2) of Rule 23 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 includes within its sweep application of mind, personal hearing and recording of reasons. It is urged by him that the petitioner was not granted personal hearing by the Appellate Authority while deciding the appeal or at the time of deciding the review application. Hence, according to him, the order of Appellate Authority stands vitiated and is liable to be set aside.

8. Mr.N.W.Almelkar, learned Counsel appearing for the respondent/bank has urged that full hearing was given to the petitioner by the Disciplinary Authority, which has considered each and every charge levelled against the petitioner and recorded the findings in support of ultimate punishment of dismissal from service. He has urged that there is no requirement of grant of personal hearing contemplated under any of the clauses of Rule 17, re- produced above, to be given to the delinquent employee. The learned Counsel submits that the word 'consider' employed in clause (4) of Rule 17 cannot be given wider meaning so as to include within its sweep the opportunity of personal hearing to be given to the delinquent employee. He submits that had such intention been of the Legislature, such requirement could have been incorporated under the said Rule.

9. In the decision of Full Bench of this Court in the case of Anil Amrut Atre (cited supra), the provision of Rule 23(2) of the Maharashtra Civil Services (Disciplinary and Appeal) Rules, 1979 was considered. The Rule provided that the Appellate Authority shall consider several aspects mentioned in the Rule including non-compliance of procedure violation of the principles of natural justice and the adequacy or inadequacy of the punishment imposed. The said Rule did not contemplate specifically an opportunity of personal hearing to be given to the delinquent employee by the Appellate Authority. In this background, the Full

Bench of this Court has held in paragraph 31 of the said decision as under :

"31. In our opinion, however, the point is finally concluded by the Supreme Court in above two decisions, wherein interpreting similar Rules, the Apex Court has held that personal hearing ought to be afforded by the Appellate Authority to the delinquent. We are, therefore, unable to agree with the conclusions in the above cases. Similarly, in Writ Petition No.3221 of 1996 (Subhash Tatoba Nikam .vs. The Hon'ble High Court of Judicature of Bombay and another) decided on December 3, 1998, it was held that when the Appellate Authority affirms the original order, no reasons were required to be recorded. With respect, the decision is not in conformity with the decisions of the Supreme Court R.P.Bhatt and Ram Chander, and cannot be said to have laid down correct law on the point, State Bank of Patiala vs. Mahendra Kumar Singhal, 1994 Supp.(2) SCC 463 is not relevant to the point. It was held by the Apex Court therein that affording of personal hearing by the Appellate Authority is not necessary in absence of such a rule. In the instant case, the Appellate Authority is required to consider as to whether the procedure laid down in the Rules has been followed and, according to the Supreme Court, the expression ('consider') will include within its sweep application of mind, personal hearing and recording of reasons. It was, therefore, obligatory on the Appellate Authority to apply its mind and to pass an appropriate speaking order after affording personal hearing to the delinquent. "

10. The Court has held that the Appellate Authority was required to consider as to whether the procedure laid down in the Rules has been followed and the word 'consider' will include within its sweep application of mind, personal hearing and recording of reasons. It holds that it was, therefore, obligatory on the Appellate Authority to apply its mind and to pass appropriate speaking order after affording personal hearing to the delinquent.

11. Keeping in view the aforesaid law laid down by the Full Bench of this Court, we are of the view that clause (4) under Rule 17 of the Regulations of 1976 reproduced above contemplates grant of personal hearing when it uses the word 'consider' in respect of justification of order and imposition of penalty; whether excessive or inadequate. The requirement is mandatory. We find that in fact the aspect of proportionality of punishment has not at all been considered by the Appellate Authority and no reasons are found to be recorded. The undisputed position in the present case being that there was total absence of grant of personal hearing to the petitioner, in our view, there was violation of clause (4) of Rule 17, which vitiates the order passed by the Appellate Authority dismissing the appeal filed by the petitioner along with the order passed rejecting the application for review.

12. In view of the aforesaid position, this Writ Petition is partly allowed and the following order is passed.

a) The order dated 1st October, 2008 passed by the Reviewing Authority dismissing the application for review is hereby quashed and set aside.

b) The order dated 24th September, 2007 passed by the Appellate Authority rejecting the appeal filed by the petitioner is also quashed and set aside.

c) The appeal filed by the petitioner is restored and the Appellate Authority is directed to decide the appeal afresh within a period of three months from the date of first appearance of petitioner before the Appellate Authority.

d) The Appellate Authority is directed to permit the petitioner/employee or his representative to avail the opportunity of personal hearing. The representative shall be from the organization itself as is provided under the Rules.

We keep all the questions on merits of the matter open to be agitated and decided in the appeal.

No order as to costs.