

(2008) 10 AP CK 0036
In the Andhra Pradesh High Court
Case No : Writ Petition No. 6810 of 2006

Durbha Radhakrishna

APPELLANT

Vs

Bank of Baroda and Others

RESPONDENT

Date of Decision : 22-10-2008

Acts Referred:

Citation : (2009) 1 ALD 514

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : S. Ravindranath, for the Appellant; K. Srinivas Murthy, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioner was initially appointed as a Clerk in the Bank of Baroda, 1st respondent herein, on 29.03.1973. He was promoted as Officer on 01.02.1978, as Manager on 18.08.1990 and as Senior Manager on 28.08.1995. He states that he was rewarded on several occasions, in recognition of his meritorious service, and that there was never any complaint against him, over his 29 years of service.

2. The petitioner was placed under suspension by the General Manager, South Zone, 3rd respondent herein, through order, dated 05.12.2001. Few days thereafter, he was issued a show cause notice, with a direction to explain as to why disciplinary action be not initiated against him, for the reasons mentioned therein. The petitioner submitted his explanation. On a consideration of the same, the 3rd respondent issued a charge sheet, dated 04.02.2003. Reply to the charge sheet was submitted by the petitioner on 13.03.2003. Departmental enquiry was conducted and a report emerged out of it on 11.05.2004. The 3rd respondent made available, a copy of the report, to the petitioner and his remarks were invited. The petitioner accordingly submitted his remarks. Thereafter, the 3rd respondent passed an order, dated 31.12.2004, directing removal of the petitioner from service. The appeal preferred by the petitioner to

the 2nd respondent was rejected on 06.04.2005. Review filed by him before the 1st respondent was also rejected on 08.03.2006. Hence, this writ petition.

3. The petitioner contends that the allegations made against him were only in relation to certain adjustments and it was not even alleged either that the Bank had suffered any financial loss or that he had misappropriated any amount. He contends that the departmental proceedings are untenable and that the punishment imposed against him is totally disproportionate.

4. The respondents filed a counter affidavit, denying the allegations of the petitioner. It is stated that the petitioner committed several irregularities, when he worked at Chanchalguda Branch of the Bank, in the context of issuing Fixed Deposit Receipts (FDRs) to an educational institution. They state that the prescribed procedure was scrupulously followed through out the proceedings and that the punishment imposed against the petitioner cannot be treated as disproportionate.

5. Sri S. Ravindranath, learned Counsel for the petitioner submits that the disciplinary proceedings against the petitioner was motivated and the minor lapses in maintaining the records, which did not result in any financial loss or undue enrichment of the petitioner, have been magnified, as acts of serious misconduct. He further submits that though the Service Regulations of the Bank do not provide for issuance of show cause notice, on the basis of enquiry report, the respondents were under obligation to take into account, the meritorious service rendered by the petitioner, as an extenuating circumstance, even assuming that the charges are held proved. He places reliance upon a Judgment of the Supreme Court in *Kailash Nath Gupta Vs. Enquiry Officer, (R.K. Rai), Allahabad Bank and Others*, .

6. Sri K. Srinivas Murthy, learned Counsel for the respondents, on the other hand, submits that the allegations made against the petitioner in the charge sheet are very serious and in the departmental enquiry, they were held proved. He submits that the lack of bona fides on the part of the petitioner was clearly demonstrated and the punishment imposed on him cannot be treated as disproportionate. He too places reliance upon certain judgments, which are to the effect that the High Courts would be slow to re-assess the punishment imposed, as a result of disciplinary proceedings.

7. The allegations made against the petitioner, be it, in the initial show cause notice or subsequent charge sheet, relate to the manner, in which he dealt with certain FDRs, in particular, the non-observance of the prescribed procedure. There is no allegation that the petitioner had misappropriated any amount or that the bank had suffered any financial loss. This is not to suggest that disciplinary action can be taken against an employee, only when any financial loss is caused to the institution or that the employee has misappropriated any amount. If there is serious violation of the prescribed norms, it can certainly constitute the basis for initiation of disciplinary proceedings. The factors, such as absence of any loss,

would, if at all anything, have a bearing upon the punishment, which the employer may otherwise choose to impose on an employee.

8. In the departmental enquiry, the charges framed against the petitioner were held proved and as required under the Service Regulations, the copy of the report was furnished to the petitioner, inviting comments. No serious procedural lapses are pointed out. As expected, the petitioner made an attempt to convince the disciplinary authority that he is not guilty of the charges framed against him. After making reference to the developments that have taken place, up to the submission of comments by the petitioner to the enquiry report, the 3rd respondent imposed the punishment of removal from service. The appeal as well as the review preferred by the petitioner to respondents 2 and 1 respectively, were also rejected.

9. This Court cannot sit as an appellate authority to re-appreciate the evidence or to re-assess the findings recorded by the inquiring authority, except where they are found to be totally perverse. No such elements are noticed in the impugned proceedings. The grievance of the petitioner is mostly about the nature and quantum of punishment imposed against him. The plea of the petitioner that he had meritorious service of 29 years, before the disciplinary proceedings came to be initiated, virtually remains unrebutted. It is not as if that the clean record of an employee is a licence to commit any serious irregularity, but it would certainly be a factor to be taken into account, while imposing the punishment. Notwithstanding the fact that the scope of interference with the quantum of punishment is limited, the Courts cannot remain oblivious, if the record discloses that the relevant facts are not taken into account.

10. It is apt to refer to the observation of the Supreme Court in *Kailash Nath Gupta Vs. Enquiry Officer, (R.K. Rai), Allahabad Bank and Others*, which reads as under:

11. In the background or what has been stated above, one thing is clear that the power of interference with the quantum of punishment is extremely limited. But when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly the Court can direct re-consideration or in an appropriate case to shorten litigation, indicate the punishment to be awarded. It is stated that there was no occasion in the long past service indicating either irregularity or misconduct of the appellant except the charges which were the subject matter of his removal from service. The stand of the appellant as indicated above is that though small advances may have become irrecoverable, there is nothing to indicate that the appellant had misappropriated any money or had committed any act of fraud. If any loss has been caused to the bank (which he quantifies at about Rs. 46,000/-) that can be recovered from the appellant. As the reading of the various articles of charges go to show, at the most there is some procedural irregularity which cannot be termed to be negligence to warrant the extreme punishment of dismissal from service.

11. It has already been pointed out that the record of the petitioner, over the past three decades of service, was not at all discussed by the 3rd respondent, while imposing the severe punishment of removal from service. Every lapse cannot by itself invite the serious punishment. Conversely, the punishment imposed by an authority must be proportionate to the misconduct proved against the employee. In determining whether or not the punishment is proportionate to the misconduct, the past record of an employee would certainly be a relevant factor. The reputation built or the contribution made for the development of the institution, by an employee for a fairly long period, cannot just be brushed aside, when a lapse is noticed at a later point of time. Here again, much would depend upon the nature of lapse. As pointed out by the Hon''ble Supreme Court, the financial loss that resulted, on account of the misconduct of the employee, would be an important circumstance. Not only the disciplinary authority but also the appellate and review authorities did not bestow their attention to these aspects. This Court is of the view that the matter needs to be re-examined, confined to the quantum of punishment. The fear of the respondents that setting aside of the order of punishment imposed by the disciplinary authority may result in automatic reinstatement of the petitioner or his entitlement to be paid full wages, can be allayed, by issuing necessary directions, in this regard.

For the foregoing reasons, the writ petition is allowed, directing that-

(a) the order, dated 31.12.2004, passed by the 3rd respondent and those passed by respondents 2 and 1, dated 06.04.2005 and 08.03.2006, respectively, are set aside;

(b) the matter is remanded to the 3rd respondent for fresh consideration and disposal, only as regards the quantum of punishment, and the conclusions arrived at, as regards the charges in the disciplinary proceedings, shall be treated as final;

(c) The 3rd respondent shall take into account, the past service of the petitioner and the fact that (a) the Bank did not suffer any financial loss and (b) the petitioner was not alleged to have misappropriated any amount; while choosing the punishment to be imposed against the petitioner. This exercise shall be completed within a period of two (2) months from the date of receipt of a copy of this order;

(d) Setting aside of the impugned order shall not be construed as a basis for automatic reinstatement of the petitioner nor the respondents shall be under obligation to pay full wages, till a fresh order, as indicated above, is passed; and

(e) it shall be open to the 3rd respondent to indicate the manner, in which the period between the date of removal and the date of reinstatement, shall be treated in case any punishment, other than the removal or dismissal from service, is imposed.

There shall be no order as to costs.