

(1998) 03 KAR CK 0015
In the Karnataka High Court
Case No : Writ Petition No. 17478 of 1991

G. Sundaram

APPELLANT

Vs

General Manager Disciplinary Authority, Canara Bank and
Others

RESPONDENT

Date of Decision : 25-03-1998

Acts Referred:

Banks Regulation, 1976 — Regulation 8, 8 (2)
Constitution of India, 1950 — Article 226

Citation : (1998) ILR (Kar) 4005

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : P.S. Rajagopal, for the Appellant; Sundra Swamy Ramdas, for the Respondent

Final Decision : Allowed

Judgement

H.L. Dattu, J.—This petition under Article 226 of the Constitution takes exception to the orders passed by the appellate authority dated 14th May 1991 in confirming the orders made by the disciplinary authority dated 20th June 1990 in imposing a minor penalty under the Canara Bank Officer Employees (Discipline and Appeal) Regulations, 1976 ("Regulations" for short).

2. Brief facts are, petitioner is an employee of the Canara Bank ("Bank" for short). In the year 1984, he was holding the post of an officer at Tirunelveli Junction branch of the Bank. As evidenced by annexure A to the petition, a show cause notice dated 17.01.1987 came to be issued by the Division Manager of the Bank directing the petitioner to show cause to the allegations of omissions and commissions said to have been committed by him while working at Thirunelveli Junction Branch of the Bank. The details of which, I will notice a little later. The notice was replied and allegations were denied by the petitioner by his letter dated 9.2.1987. On receipt of the reply from the petitioner, the Bank by its order dated 11.05.1987, directed the petitioner to -reimburse to the Bank an amount

of Rs. 2,200/- said to be the pecuniary loss caused to the Bank by petitioner's negligence. Since petitioner did not comply with the demand and directions of the Bank, a charge memo dated 21.11.1989 came to be served on the petitioner, incorporating the same acts of omissions as noticed in the show cause notice. The delinquent officer filed his written statement of defence in detail denying that he had committed the acts of mis conduct alleged in the charge memo. The disciplinary authority after considering the reply filed by the petitioner, passed an order exercising his powers under Clause 8(1) of the Regulations, imposed a penalty as provided under Clause 4(d) of the Regulations. Thereafter petitioner had unsuccessfully had filed an appeal before the appellate authority. Aggrieved by these orders, delinquent officer employee is before this Court inter alia questioning the legality or otherwise of the aforesaid orders.

3. Though numerous grounds are raised in support of the relief sought in the petition, what is really pressed into service by the learned counsel for petitioner is the contention that the order of the disciplinary authority is vitiated on the ground of noncompliance of the procedure prescribed under Clause 8 of the Regulations 1976 and as much as the punishing authority without even holding any enquiry into the allegations made in the charge memo could not have imposed any penalty much less even minor penalty and therefore the impugned order is bad, illegal, invalid and wholly arbitrary.

4. Per contra Sri S. Ramadas learned Counsel for respondents sought to justify the impugned orders by placing reliance on the language employed in Regulation 8(1) of the Regulations and submits that if the materials available on record sufficient to hold an employee guilty of the lapses levelled against him, there is no necessity to hold any enquiry much less a detailed enquiry.

5. In order to appreciate the rival contentions, it is necessary to refer to Statutory provisions. Clause 8 of the Regulations is as under:

8. Procedure for imposing minor penalties:

(1) Where it is proposed to impose any of the minor penalties specified in clauses (a) to (d) of regulation 4, the officer employee concerned shall be informed in writing of the imputations of lapses against him and given an opportunity to submit his written statement of defence within a specified period not exceeding 15 days or such extended period as may be granted by the disciplinary authority and the defence statement, if any, submitted by the after employees shall be taken into consideration by the Discipline Authority before passing orders.

(2) Where, however, the Disciplinary Authority is satisfied that an enquiry is necessary, it shall follow the procedure for imposing a major penalty as laid down in regulation 6.

(3) The record of the proceedings in such cases shall included-

i) a copy of the statement of imputations of lapses furnished to the officer employee;

ii) the defence statement, if any, of the officer employee, and

iii) the orders of the disciplinary authority together with the reasons thereof:

6. Regulation 8 provides for the procedure where minor penalty is to be imposed. The regulation requires the disciplinary authority to inform the delinquent officer of the proposal to take action against him and give him a reasonable opportunity of making such representation as he may wish to make against the proposal. The clause do not envisage for examination of witnesses, cross examination of witnesses, furnishing a copy of the enquiry report to the delinquent etc. That means disciplinary authority can impose a minor penalty without going through the whole procedure of elaborate enquiry. Sub-clause (2) says that though the holding of enquiry before imposing a minor penalty is not mandatory, but is in the discretion of the disciplinary authority, who may if necessary may hold such enquiry before imposing punishment. So Sub-clause (2) gives an indication that where minor punishment is imposed, the procedure for holding an enquiry need not be followed unless otherwise desired by the disciplinary authority.

7. Keeping in view the possible construction and interpretation that could be placed on Clause 8 of the regulations, let me advert to the fact, situation and find out whether in the facts and circumstances of the present case an enquiry was necessary and noncompliance of it, has vitiated the enquiry proceedings and the ultimate result. The story unfolds with the issuance of a notice dated 17.01.1987 by the divisional manager of the Bank. In the said notice the Bank alleges certain acts of omissions and commissions said to have been committed by the petitioner while working as an officer at Tirunelveli junction branch of the Bank. The show cause notice is as under:

The following incident is brought to our notice:

On 23.05.84 our Tirunelveli Junction Branch discounted a TT on Madras for Rs. 10.00 lakhs with State Bank of India. The request letter for discounting the TT for Rs. 10.00 lakhs addressed to State Bank of India was sent in the normal course.

8. A copy of the request letter to State Bank of India dated 23.05.84, which was in effect meant for Accounts Section, Madras, was again posted to State Bank of India. It was found written in the original. There was reportedly no indication to show that it is only a copy and not the original. The said second letter was received by State Bank of India on 28.05.84 and was promptly discounted and Rs. 10.00 lakhs was again, credited to our account " with them on the said date.

9. The said second credit was noticed by out Tirunelveli Junction Branch only on 05.06.84 and immediate arrangements were made for reimbursing the amount to State Bank of India, which was credited to their account at Madras on 05.06.84. State Bank of India, Tirunelveli, have charged Rs. 4,950/- as the overdue interest for the delayed reimbursement.

10. We note that you have signed both the letters dated 23.05.84 addressed to

State Bank of India for discounting a TT of Rs. 10.00 lakhs.

Please let us know what you have to say in the matter within 3 days of receipt of this letter.

11. The notice was replied by the delinquent and in that the allegations were not only denied but also explained the procedure while discounting telegraphic transfers. Since much has to be decided on the reply of the delinquent the same is extracted and it reads as under:

From

G. Sundaram (10191) Palayamkottai Manager Date 9/2/87 Canara Bank Palayamkottai.

To

The Divisional Manager Canara Bank Staff Section (o) Circle Office Madurai.

Through

The Senior Manager Canara Bank Palayamkottai

Dear Sir,

Sub: TT for Rs. 10.00 lakhs discounted on 23.5.84 & again on 28.5.84 by B/o Junction, Tirunelveli with State Bank of India -overdue interest.

Ref: Yr. Lr. MDUCO SSO 1376 E113(i), dated 17.01.1987. I am in receipt of your above letter and I would like to state the following facts to clarify.

12. 1. Depending on whether the clearing is in favour or against on a particular day, it is customer for the branch to arrange with State Bank of India for discounting of TTs. The request letter for requesting State Bank of India to discount it is invariably handed over in person on the same date to the officials of State Bank of India across the counter so as to enable them to discount the TT on that date. The relevant request letter is never sent by Post considering the necessity that the transaction should be completed on the same date and the fact that the office of State Bank of India is less than a kilometre from the branch.

13. I would like to state that this procedure is being following till date.

14. Under this circumstances, I would like to make it clear that

a) I can not be held responsible for the relevant letter being sent in post instead of hand over the same in person as done till date;

b) For your ready reference we are enclosing a copy of the letter which is normally used for the purpose of discounting TTs. A careful perusal of the above letter will reveal that the request is for discounting TT on the date mentioned in the letter and not for subsequent dates. As such, I am of the opinion that State Bank of India is not in order in discounting the TT again on 28.5.84, when the

date of the letter is 23.5.84 and also over looking the fact that the letter has been received by post and not across the counter is normally done besides not varying the fact that for the transaction of 23.5.84 an amount of Rs. 10.00 lakhshad already been discounted and credited to our account.

c) Incidentally, I would also like to point out that on the particular day although an officer was in charge for the particular transaction, I had signed the relevant request letter for TT discounting since my signature alone was lodged with State Bank of India. I had signed that letter admits other duties assigned to me.

15. Based on the above facts, I would like to submit that I am in no way responsible for the fact that the TT has been discounted twice by State. Bank of India and request you to allow the matter to rest.

Thanking you,

Yours faithfully

(G. SUNDARAM)

16. The Deputy General Manager by his intimation dated 11.05.1987 not convinced by the reply of the petitioner directs him to reimburse the interest loss sustained by the Bank to the tune of Rs. 2,200/- in view of the petitioner's dereliction of duty. While directing the aforesaid payment by the delinquent he observes "Further, notwithstanding the fact that the State Bank of India, Tirunelveli may not be in order in discounting TT on 28.5.1984 on the basis of the letter dated 23.05.1984, on your part, you have failed to mark the copy of the above letter meant for Accounts Section, Madras and as such you are negligent in that regard."

17. After exchanging some more correspondence, since petitioner failed to comply with the directions and demands of the Bank, respondents initiated proceedings of disciplinary action under Clause 8(1) of the Bank's Regulation 1976 by issuing a charge memo dated 21.11.1989. The charge memo also contained the statement of imputations but was not accompanied by any documents, the delinquent not only denies the allegations in his reply dated 29.12.1989 but also informs them if for any reason they are not satisfied with the explanation, an impartial enquiry may be ordered so that he can establish his innocence in the matter and further demands for supply of copies of certain documents presumably to offer further explanation. The disciplinary authority not being convinced by delinquent's explanation and without even giving a finding whether in a case of this nature no enquiry need be held as requested by the delinquent proceeds to pass an order dated 20th June 1990 imposing a minor penalty as envisaged under regulation 4(d) of "C and D" regulations.

18. In my view the proceedings are vitiated for non-compliance of Sub-clause 2 of Regulation 8 of Banks Regulation. I hasten to add that there can be no manner of doubt that where a minor punishment is imposed, the procedure for holding an enquiry need not be followed unless otherwise desired by the disciplinary

authority. But surely it does not mean that the enquiry is wholly barred or that it is entirely subject to the pleasure of the disciplinary authority. Sub-clause 2 provides that if disciplinary authority is satisfied if an enquiry is necessary, then he will follow the procedure prescribed for imposing a major penalty as laid down in regulation 6. The expression "satisfied such an enquiry is necessary" clearly suggests that the disciplinary authority must apply its mind to the facts and circumstances of the case as disclosed by the delinquent officer and give his reasoned finding whether an enquiry is necessary or not. The duty to give satisfactory reasons for coming to a decision is a duty of importance which cannot be lawfully disregarded. Since reasons are the links between the materials on which certain conclusions are based and the actual conclusions and they disclose how the mind is applied to the subject matter and it excludes the chances to reach arbitrary, whimsical or capricious decision. It also aids the appellate or revisional authority or the supervisory jurisdiction of this Court under Article 226 of the Constitution to see whether the authority concerned acted fairly and justly to meet out justice to the aggrieved person. In my view in the instant case the disciplinary authority while framing the impugned order does not even say a case this nature does not require any enquiry much less summary enquiry. In the absence of such a finding either in the note or order sheet maintained by the disciplinary authority or in the order itself, the order imposing penalty would be invalid. More so in the present case that the delinquent officer employee in his reply to the charge memo requests the disciplinary authority to hold an impartial enquiry, if he is not satisfied with the explanation offered by him. There is no express provision in the regulation for the disciplinary authority either to accede or reject the demand of the delinquent but when such a request is made by the delinquent officer it is for the disciplinary authority to consider the same and pass appropriate orders. This unwritten duty is fundamental to a just decision by any authority which decides a controversial issue affecting the rights of the parties. Since he is required to decide in the spirit and with a sense of responsibility of a quasi judicial authority with a duty to meet out even handed justice. The omission of this express requirement in my view is supplied by rules of justice which is considered as an integral part of the judicial process which also governs quasi judicial authorities when deciding controversial points affecting rights of parties.

19. In the instant case disciplinary authority has not indicated any where in his order that whether an enquiry was required or not inspite of such a demand by the delinquent officer. The appellate authority though notices this omission but glosses over the same. No material has been placed on record to show that the omission has caused no material prejudice to the petitioner. In fact petitioner has ably demonstrated that if an enquiry had been held, he would have been in a position to prove his innocence and the fault is not of him but of State Bank of India which has discounted the TT basing on a letter dated 23.05.1984 received by them only on 28.05.1984. Applying the possible construction that could be placed on Sub-clause 2 of regulation 8 of Bank's regulations it can safely be said

that the impugned orders are invalid.

20. For the reasons stated, petition succeeds and is allowed. Rule made absolute. The impugned orders dated 20th June 1990 passed by the disciplinary authority and the order dated 14th May 1991 framed by the appellate authority are set aside. This order will not come in the way of the disciplinary authority making fresh orders in accordance with law. In the facts and circumstances of the case parties are directed to bear their own costs.