
(2014) 09 AP CK 0117

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 2331 of 2005

Gandhi Ranga Rao

APPELLANT

Vs

The Deputy General Manager

RESPONDENT

Date of Decision : 09-09-2014

Acts Referred:

Citation : (2014) 09 AP CK 0117

Hon'ble Judges : L.N. Reddy, J;Challa Kodanda Ram, J

Bench : Division Bench

Advocate : S. Pranathi, Advocate for the Appellant; E. Madan Mohan Rao, Advocate for the Respondent

Judgement

L. Narasimha Reddy, J.—The unsuccessful petitioner in W.P. No. 6353 of 2004 is the appellant. The learned single Judge dismissed the writ petition through order dated 03-08-2005. The facts relevant to the case, in brief, are as under:

"The petitioner was appointed as a Clerk-cum-Cashier in the State Bank of India in the year 1985, on being selected. From the date of appointment till 27-11-1999, he worked in the Duvvur Branch in Kadapa District. Thereafter, he was transferred to a Branch at Chitvel in Kadapa District. He was placed under suspension through order dated 01-02-2001, pending enquiry. Eight months thereafter, he was issued a charge-sheet dated 03-10-2001. The appellant submitted his explanation on 27-10-2001, denying the charges.

Not satisfied with the explanation, the Disciplinary Authority, the 2nd respondent appointed an enquiry officer."

2. The enquiry officer submitted a report on 05-03-2003, holding that Charges (a) (i) and (b) were not proved, but charges (a)(ii) and (c) were proved. The 2nd respondent issued proceedings dated 07-04-2003, informing the appellant that he is differing with the findings of the enquiry officer on charges (a)(i) and (b) and that he has decided to dismiss the appellant from service. The appellant submitted his representation/explanation on 09-07-2003. The 2nd respondent

passed an order dated 16-07-2003, dismissing the appellant from service. The appeal to the 1st respondent was rejected on 30-01-2004. Thereupon, the appellant filed the writ petition, challenging the order of dismissal from service.

3. The appellant pleaded that the 2nd respondent committed illegality in straightaway differing with the findings of the enquiry officer and imposing the penalty. He has also urged other grounds. The writ petition was opposed by the respondents. According to them, the material on record was sufficient to hold all the charges as proved. The learned single Judge dismissed the writ petition.

4. Ms. S. Pranathi, learned counsel for the appellant submits that the order passed by the 2nd respondent is illegal, arbitrary and contrary to the settled principles of law. She contends that the charges were framed long after the so-called acts of misconduct have taken place, and the charge-sheet itself was issued eight months after the appellant was placed under suspension. She contends that the enquiry officer was satisfied that there is no basis or substance in the charges (a)(i) and (b), and accordingly held them not proved. It is pleaded that in case the 2nd respondent wanted to differ with the findings of the enquiry officer, it was open to him to do so, only after issuing a show cause notice, requiring the appellant to explain as to why a different view be not taken on the findings of the enquiry officer. It is urged that the action taken by the 2nd respondent, straightaway differing with the findings of the enquiry officer is not only contrary to the relevant provisions of law, but also the principles of natural justice, and the learned single Judge did not take the same into account.

5. Sri E. Madan Mohan Rao, learned counsel for the respondents, on the other hand, submits that the charges framed against the appellant are grave in nature, and though there was sufficient material to prove all of them, the enquiry officer has taken the view that charges (a)(i) and (b) as not proved. It is also pleaded that the disciplinary authority has the power to differ with the findings of the enquiry officer, and that the final decision was taken only after the appellant submitted his explanation.

6. The charges framed against the appellant read as under:

(a) "It is alleged that by misusing your position in the Bank,

(i) you have received cash from Savings Bank depositors and made entries in the pass book/ledger concerned without accounting for the money received from the customers in the branch books. We furnish hereunder the particulars of a few accounts:

Sl. No.

Account No.

Name of the Account holder

Amount Rs.

Date of posting in ledger/passbook

1.

SB P18/5896

Smt. K. Sankaramma

12,000.00

07.11.00(passbook)

2.

SB P2/1643

Shri Shaik Nanne Saheb

10,000.00

28.10.00 (ledger sheet)

Total

22,000.00

(ii) You have received cash from Demand Loan borrowers and issued counterfoils/ made spurious entries in the demand loan ledgers without accounting for the money received from the borrowers in branch books. We furnish hereunder the details of a few accounts:

Sl. No.

Account No.

Name of the Account holder

Amount Rs

Date of posting in ledger

1.

DL Ag25/209

Shri Dandu Subbaiah

2,700.00

12.06.00

2.

DL Ag26/2

Smt. V. Sugunamma

30,000.00

15.04.00

3.

DL Ag24/163

Shri B. Varadaiah

15,500.00

03-02-00

4.

DL Ag26/81

Smt. M. Kanthamma

29,000.00

29.05.00

5.

DL P8/25/72

Shri M. Narasaramaiah

9,140.00

05.07.00

6.

DL P8/25/119

Smt. C. Subbamma

4,000.00

14.06.00

Total

90340.00

Thus, you have misutilised the amounts so received from the customers.

(b) It is alleged that you have negotiated a cheque No. 694139 dated 03.10.2000 for Rs. 40,000/- at Duvvur branch drawn on Chitvel branch. To cover up this, you had taken possession of the negotiated cheque at Duvvur branch and handed over the instrument at Chitvel branch on 31.10.2000, that too on demand made by the Branch Manager of Chitvel branch with a delay of 28 days. It is thus alleged that you have misutilised the DD purchase facility with a deliberate intention of gaining temporary use of Bank's funds for your personal benefit.

(c) It is alleged that you have misutilised an amount of Rs. 2,500/- remitted by Smt. G. Vijayalakshmi in her Savings Bank Account Ag8/5077 on 21.08.00.

(d) It is further alleged that you have misutilised an amount of Rs. 16,000/- remitted by Smt. V. Padmavathi in her Savings Bank account P9/4380, on 08.06.2000, through her mother".

7. The appellant submitted a detailed explanation, with reference to each and every charge. The explanation was not accepted and departmental enquiry was ordered. In his report, the enquiry officer held (a)(i) not proved, (a)(ii) proved; (b) not proved; (c) proved, and (d) proved.

8. In case the 2nd respondent wanted to differ with the findings of the enquiry officer on charges (a)(i) and (b), it was open to him to do so, after issuing a show cause notice to the appellant.

The show cause notice must be, as to why a different view be not taken on the charges referred to above. However, in his memorandum dated 07-04-2003, the 2nd respondent straightaway held that he takes all the charges as proved. The relevant portion reads as under:

"With reference to the domestic enquiry held into the charges levelled against you vide memorandum No. DPC/R-IV/061 of 03.10.2001, I have carefully examined the proceedings of the enquiry and find that there is no violation of principles of natural justice, equity and fair play. The Enquiry Officer found that the charges (a)(ii), (c) and (d) are proved and the charges (a)(i) and (b) are not proved. I have examined the Enquiry Officer's findings, the prosecution brief and PExs, defence brief and I held all the charges levelled against you vide the Memorandum referred to above are proved. Therefore, I hold you guilty of the charges (a), (b), (c) and (d) as mentioned in memorandum No. DPC/R-IV/061 dated 03.10.2001."

9. Thus, he concluded that the charges are proved, ignoring the findings of the enquiry officer. Though personal hearing was also given, the scope thereof was only about the quantum of punishment. Ultimately, the order of dismissal from service was passed against the appellant.

10. With the finding of an enquiry officer, that a particular charge or a facet thereof is not proved, valuable right accrues to the concerned employee. Such a finding can be differed by the disciplinary authority, firstly by indicating the relevant reasons, and secondly by requiring the employee to show cause as to why a different view be not taken. If the disciplinary authority straightaway differs with the findings of the enquiry officer, the very purpose of conducting the departmental enquiry is defeated. The law in this regard is fairly well settled. In Punjab National Bank and others v. Kunj Behari Misra the Hon'ble Supreme Court held as under:

"Para-19: 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."

11. Their Lordships heavily relied upon the judgment in *Ram Kishan v. Union of India*, wherein it was held,

"The purpose of the show-cause notice, in case of disagreement with the findings of the enquiry officer, is to enable the delinquent to show that the disciplinary authority is persuaded not to disagree with the conclusions reached by the enquiry officer for the reasons given in the enquiry report or he may offer additional reasons in support of the finding by the enquiry officer.

In that situation, unless the disciplinary authority gives specific reasons in the show-cause on the basis of which the findings of the enquiry officer in that behalf is based, it would be difficult for the delinquent to satisfactorily give reasons to persuade the disciplinary authority to agree with the conclusions reached by the enquiry officer.

In the absence of any ground or reason in the show-cause notice it amounts to an empty formality which would cause grave prejudice to the delinquent officer and would result in injustice to him. The mere fact that in the final order some reasons have been given to disagree with the conclusions reached by the disciplinary authority cannot cure the defect."

12. The law as it stands now, is reflected in the judgment of the Supreme Court in *Kunj Behari Misra's* case (*supra*). The learned counsel for the respondents is not able to point out that the Supreme Court has taken any different view.

13. In the instant case, the 2nd respondent has straightaway disagreed with the findings of the enquiry officer. Therefore, the order dated 16-07-2003, passed by the 2nd respondent is liable to be set aside.

14. It is sought to be argued that the findings of the enquiry officer, in favour of the appellant, were only on certain inconsequential aspects, and even without the findings on those charges, the punishment of dismissal from service can be sustained. We find it difficult to agree with this contention. Firstly, the charges on which the enquiry officer recorded a finding in favour of the appellant are fairly grave in nature. For example, in charge (b), the amount involved is Rs. 40,000/- and it was held not proved.

The amount in the charges (c) and (d) is Rs. 2,500/- and Rs. 16,000/- respectively. There again, the charge was not about misappropriation, but mishandling certain amount.

Under these circumstances, the punishment of dismissal can be sustained, only if the findings on charges (a)(i) and (b) are taken as proved in the enquiry.

15. Secondly, whenever an order passed by an authority is set aside, as being violative of principles of natural justice, the Court would leave the matter at that. Ultimately it is for the concerned authority to decide whether or not to take the matter, further.

As a first step, the state of affairs, as though the order, which was set aside, did not exist, must be brought into existence, and thereafter, it must be left for the authority, to take a decision as to the further steps. The principle laid down in *Managing Director, ECIL v B. Karunakar* does not apply to the facts of the case. It is only when no prejudice can be said to have been caused to the employee, on account of any lapse in the proceedings, that the disciplinary authority can be permitted to commence the proceedings from that stage. The action of the disciplinary authority, straightaway differing with the findings of the enquiry officer does not fall into that category.

16. We therefore, allow the writ appeal and set aside the order of dismissal, passed by the 2nd respondent. The appellant shall be reinstated into service forthwith. It is left open to the respondents to take steps in accordance with law. The question as to how the period between the date of suspension, till the date of reinstatement, must be treated, shall depend upon the nature of steps, which the respondents may initiate, and the outcome thereof. If no further steps are taken, the appellant shall be entitled to be paid back wages to the extent of 50%, and extended other attendant benefits.

17. The miscellaneous petitions filed in the writ appeal shall also stand disposed of. There shall be no order as to costs.