
(1997) 12 KAR CK 0026
In the Karnataka High Court
Case No : Writ Petition No. 2575 of 1987

G.V. Aswathanaryana

APPELLANT

Vs

The Central Bank of India

RESPONDENT

Date of Decision : 19-12-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) ILR (Kar) 1195

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

Bench : Single Bench

Advocate : K. Subbarao, for the Appellant; Ramdas, for R-4, R-1, R-2, R-8 and R-5, for the Respondent

Final Decision : Dismissed

Judgement

H.L. Dattu, J.—Petitioner before this Court was a Branch Manger at Jangamakote Branch, Central Bank of India ("Bank" for short). While working in the said branch he was served with a charge memo dated 7/9th August 1982 containing charges of misconduct as a Branch Manger of Jangamakote Branch. They relate to the events that took place in the year 1979 and among other things it specified that the petitioner committed gross official misconduct in as much as misused his official position by sanctioning 21 loan applications for a total amount of Rs. 1,05,000/- contrary to the banking procedure, thereby committing gross misconduct within the, meaning of Regulation 3(1) read with Regulation 24 of Central Bank of India Officer, Employees' conduct Regulations 1976 (hereinafter referred to as the Regulation) attracting penalty under Regulation 4 of Conduct Regulations. Petitioner was asked to furnish his explanation to the charge memo within 15 days of the receipt of the charge memo, as the enquiry was proposed to be held against him. For reasons best known to the delinquent officer, no specific written statement of defence was filed. The disciplinary authority had appointed an enquiry officer to inquire into the charges framed in the charge memo and the said enquiry officer on completion of the enquiry

proceedings submitted his report together with the records of the enquiry proceedings and other documents to the disciplinary authority. According to the enquiry officer out of five imputations made against the delinquent, two are fully proved, one is partly proved and the other two imputations are not proved. The disciplinary authority after considering the report of the enquiry officer and records of the proceedings and after concurring with the findings of the enquiry officer passed an order dated 8.11.1984 in terms of Regulation 4 of Conduct Regulations. The penalty imposed is as under:

"Reduction in pay be 5(five) steps in the present time scale with cumulative effect."

2. Petitioner challenged the said order before the appellate authority of the Bank as provided under the Conduct Regulations. The appeal came to be dismissed as per annexure N to the petition dated 25.7.1985 concurring with the orders of the disciplinary authority. It is these orders which have brought the petitioner before this Court.

3. Sri K. Subba Rao Learned Counsel appearing for the petitioner as usual, strongly and vehemently contends that the orders made by the disciplinary authority and confirmed by the appellate authority is invalid and illegal and in as much and entire proceedings are vitiated for non observation of fair play in action and the rules of natural justice. In support of that contention labors hard to persuade this Court to accept his submissions by taking through the lengthy evidence on record, the orders made by the disciplinary authority and the appellate authority. This Court should definitely place on record its deep appreciation for the untiring, industrious, and unflagging efforts of the Learned Counsel to exposes the cause of his client. The other grievance made by the Learned Counsel in the present petition touching upon the illegalities in the conduct of the proceedings are:

(1) that the charges are vague which prevented the delinquent officer to effectively reply to the allegations made in the charge memo;

(2) relevant documents though sought for not furnished to the delinquent which prevented the delinquent to file his written statement of defence;

(3) assistance of legal practitioner to defend in the enquiry proceedings though asked for was refused;

(4) evidence in support of the delinquent was ignored by the inquiry officer, therefore the findings are perverse;

(5) lastly the disciplinary authority had not applied its mind before passing the order of punishment and it merely agreed with the findings of the enquiry officer and the appellate authority also dismissed the appeal without assigning proper reasons and therefore strongly appeals to the Court to void the impugned orders.

4. Sri Ramdas, the Learned Counsel for the respondents may be knowing the

mind of this Court on all the issues raised by the Learned Counsel for petitioner out shorts his submissions and only suggests and reminds this Court the scope of judicial review in domestic enquiry proceedings by drawing the attention of this Court to the observations made by the Supreme Court in B.C. Chaturvedi Vs. Union of India and others, . In the said decision the Court was pleased to observe:

12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a findings of fact or conclusion. But that findings must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support there from, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry of where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India (UOI) Vs. H.C. Goel, , this Court held at page 728(of SCR); (at p369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the fact of the record or based on no evidence at all, a writ of certiorari could be issued."

5. Keeping in view the well settled legal position with regard to power of judicial review in domestic enquiry proceedings by this Court, let me now consider the respective stands of the parties to the lis. The first question that falls for consideration is whether the charges alleged in the charge memo is so vague and devoid of particulars and so general as to make it impossible for the delinquent

officer to make effective representation against those charges. The law is now well settled on this issue. This Court as well as other High Courts and the Hon"ble Supreme Court have time and again observed that the charges should contain particulars and should be specific and not vague otherwise it will vitiate the entire enquiry proceedings. The test is whether the charge conveys to the employee concerned the exact nature of the alleged offence in a way that would enable him to meet the charge, the reason being if the charges are vague then there is no reasonable opportunity to show cause and the purpose of issuing the charge memo itself would be defeated. The Courts have also held that whether charges are vague or not has to be examined in the fact situation and circumstances of each case. Keeping this in view, let me now peep into the charge memo dated 7/9th August 1982 and the statement of imputation of misconduct served on the delinquent officer. To me, it appears that any literate person can understand not only the charge but its implication. In my view it is capable of being understood and is sufficiently definite for the delinquent officer to make effective representation and Submit his explanation by way of statement of defence and in my view charge sheet is definite and specific and there is no vagueness in it and sets out all material particulars including the date of incidents and therefore the delinquent employee was not prejudiced in any manner whatsoever and therefore there is no merit in the first contention of the Learned Counsel for petitioner.

6. The second contention is with regard to refusal to supply certain records and permission to inspect certain documents by the enquiry officer and also the disciplinary authority which according to the learned Counsel amounts to denial of reasonable opportunity to the delinquent officer to defend himself in the enquiry proceedings and therefore the entire enquiry proceedings are vitiated cannot be accepted for the reason that the submission is contrary to the facts. The appellate authority has noticed this contention and has observed in his order that:

"On going through the relevant papers, I find that Disciplinary Authority had directed the Branch Manager to allow inspection of records and a letter of permission to inspect the documents was also issued to CO. Again when the matter was taken up at Departmental Enquiry, the Presenting Officer expressed his willingness to allow further time to CO to peruse the documents at the Branch and submit his defence. The CO. for reasons known to him, instead of approaching the Branch for verification of records, kept quiet all the way and when the enquiry was taken up after more than 75 days of time, requested for additional time for verification of documents at the branch and IA had rightly stated that he will not allow any more time and proceeded with the enquiry. Every opportunity was provided to CO in the interest of natural justice and fair play and no documents useful in his defence were held back from the enquiry."

7. The third contention is with regard to refusal by the enquiry officer to permit the delinquent officer to have the assistance of legal practitioner to defend him in

the enquiry proceedings. This issue need not detain me for long in view of the authoritative pronouncement of the Apex Court in the case of HARINARAYAN SRIVASTAV v. UNITED COMMERCIAL BANK AND ANR.. In the said decision the Court was pleased to observe as under:

3. A charge-sheet has been given to the petitioner on the allegation that he sanctioned loan for non-existing fictitious persons and got disbursement of demand drafts mentioned in the chargesheet within two days, i.e. December 10, 1990 and December 11, 1990 in favour of M/s. Sudarshan Trading Co. of Bhopal for Rs. 2,80,000/-. On the basis thereof, the respondents imputed that the petitioner committed the misconduct. An enquiry had been initiated and is now being proceeded against him. He filed an application for permission to engage the services of an advocate. The permission was refused. In the Writ Petition, the petitioner contended that the chargesheet was filed against him in the criminal Court for the self-same offence. In view of the fact that the matter is pending in the criminal Court, an assistance of the advocate is necessary. Since presenting officer of the Bank is a law graduate, denial of the assistance of an advocate is violative of principles of natural justice. The High Court has. held that since the facts are not complicated and the presenting officer of the Bank is not a legally trained person, assistance of an advocate is not mandatory in the domestic enquiry. On these simple facts, he could himself or through any other employee defend the case without the assistance of an advocate. On that basis, the High Court has held that denial of assistance of an advocate is not violative of principles of natural justice.

4. Learned Counsel for the petitioner contends that since the charge sheet has already been filed and criminal trial is pending, any enquiry conducted against the petitioner himself or any of the officer, as notified in para 19.12 of the bipartite Settlement, would prejudicially affect the petitioner's case and therefore, the denial of the assistance of an advocate is violative of the principles of natural justice. We find not force in the contention.

5. As per the Rule 19.12. of the bi-partite Settlement, the permission to defend himself with the assistance of the advocate is one of the option to be given to the Bank. We have perused the chargesheet in the enquiry now sought to be proceeded against the petitioner. The allegations are very simple and they are not complicated. Under these circumstances, we do not think that the failure to permit the petitioner to engage an advocate is violative of the principles of natural justice."

8. In the instant case the presenting officer appointed by the Management of respondent Bank is not a legally trained person nor a legal practitioner. The charges and the imputations made against the delinquent officer does not involve complicated questions of law and facts and it is not such case where the delinquent cannot be properly and effectively defended by defence representative. In my view without the assistance of legal practitioner to defend him in the enquiry proceedings the delinquent officer was not prejudiced. In fact

petitioner was assisted in the proceedings by a defence representative who has taken enough trouble to cross examine all the thirteen management witnesses effectively. Further the allegations in the charge memo was only with regard to the deviation in the banking procedure while sanctioning loan applications to the borrowers. Any employee of the bank who is well versed with the procedure and regulation of the bank can defend effectively the delinquent and that is what the defence representative Sri K.K. Pandey who is Asst Manager in the Bank has done in the enquiry proceedings.

9. The next contention of the Learned Counsel is that the findings of the enquiry officer is not based on evidence and therefore the said findings are perverse. For proper appreciation of this contention it is useful to extract the charges framed against the petitioner. The charge memo is dated 7/9.8.1982 and the same reads as under:

"Articles of charge against Shri G.V. Aswathanarayana, Branch Manager, Jangamakote Branch.

Shri G.V. Aswathanarayana, while functioning as a Branch Manager, Central Bank of India, Jangamakote Branch, during the year 1979, in the capacity of a public servant, committed gross official misconduct in as much as he misused his official position by sanctioning 10 loan applications for a total amount of Rs. 1,05,000/- as detailed in the statement of imputations of misconduct contrary to the Banking procedure and thereby contravened Regulation 3(1) Of Central Bank of India Officer Employees" (Conduct) Regulations 1976." .

10. In support of these charges management had examined thirteen witnesses and had marked nearly twenty four documents while petitioner did not examine any witnesses on his behalf. The imputation against the petitioner was that delinquent officer had misused his official position and deviated from Banking procedure while sanctioning loan amounts to twenty-one applicants for a total sum of Rs. 1,05,000/-. The enquiry officer had found that out of five imputations of the charge, one has been fully proved, two are partly proved and the other two are not proved. While coming to that conclusion the enquiry officer had taken into consideration the evidence that was available on record and in my view the said finding is entirely based on admissible evidence. The Learned Counsel Sri Subba Rao submits that there are number of contradictions in the statement made by the management witnesses and the findings of the enquiry officer was one sided ignoring evidence in support of the delinquent officer but the Learned Counsel is not in a position to point out from any portion of the findings that it is based on irrelevant considerations or that the findings are based on no evidence. It is well settled principle of law that this Court under Article 226 of the Constitution is not an appellate Authority while reviewing question of fact. It is not open for this Court to reappraise the entire evidence in the enquiry proceedings and come to different conclusions. In my view findings arrived at by the enquiry officer is such that any reasonable person could have arrived at that conclusion and therefore it cannot be said that the findings of the

enquiry officer is wholly perverse and based on no evidence. In view of this, the contention perverse and based on no evidence. In view of this, the contention of the Learned Counsel has no merit and accordingly it is rejected.

11. The other contention that was raised is that the disciplinary authority has not applied his mind before passing the order of punishment. In the instant case the disciplinary authority agrees with the findings of the enquiry officer and accepts the reasons assigned by him in support of his findings. In such situation it is not necessary for the disciplinary authority to reappreciate the entire evidence to come to same conclusion. That apart the punishing authority before imposing the punishment takes into consideration the nature of charge, imputations made in support of the charges and the defence of the delinquent. In view of this it cannot be said that there was no application of mind by the disciplinary authority before imposing punishment. Even the appellate authority while rejecting the appeal of the delinquent officer has assigned proper reasons. While agreeing with the disciplinary authority the appellate authority has considered whether the findings recorded by the enquiry officer are justified and whether the penalty imposed is excessive and after considering the records and proceedings of the disciplinary authority and after taking into consideration the grounds raised in the appeal memorandum has rejected the delinquent's appeal. In view of this, there is no merit in the contention of the Learned Counsel that the disciplinary and appellate authority had not applied their mind before imposing punishment and before concurring with the orders made. Accordingly this contention is also rejected.

Since I have not accepted any one of the contentions of Learned Counsel for petitioner, petition deserves to be dismissed and accordingly it is dismissed. Rule discharged. In the facts and circumstances of the case, parties are directed to bear their own costs.