
(1998) 03 KAR CK 0084
In the Karnataka High Court
Case No : Writ Petition No. 16162 of 1982

M. Ramesh Kamath

APPELLANT

Vs

The Corporation Bank, Mangala Devi Temple Road, Mangalore
and Others

RESPONDENT

Date of Decision : 20-03-1998

Acts Referred:

Citation : (1998) 4 KarLJ 426

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : Sri K. Subbarao, for the Appellant; Sri A.G. Holla and M/s. Tukaram S. Pai, for the Respondent

Judgement

1. This judgment requires to be prefixed with an apology of sorts because the Petitioner who is a former Bank Manager had originally filed this petition in the year 1982 and going by the available endorsements in the records it appears that the petition came to be disposed off on 3-8-1993. An appeal was filed against that order and the Division Bench set aside the order and it directed that the petition be listed for final hearing. It is not immediately understood as to why the petition took eleven years before it could be heard and unfortunately, some error appears to have crept in when the final order was prepared by the office which was why the Division Bench directed a de novo hearing. The petition was heard by me in the month of December 1994. It was taken up at the request of the learned Counsel who pointed out that it is an old matter and the request of both the parties was that it should be heard out of turn. Since the Court was virtually overburdened with the hearing of a very heavy and hotly contested appeal, in order to conserve the Court time the judgment was reserved in this case and was to have been dictated immediately after the judgment was pronounced in the other appeal. Due to an office error, the records were misplaced and could not be traced. The office maintains that the best of effort was made despite which it became virtually impossible to locate the records and these efforts are supposed to have continued until the file was finally located

only in March 1998. I have re-read the entire proceeding, re-checked the various authorities that were referred to by the learned Counsel as also taken special care to go into each of the arguments that were canvassed on the basis of the elaborate notes that had been taken by me. Undoubtedly, this delay has occurred due to the errors in the system but to my mind that is little consolation to the contesting parties and their learned Counsel who are ultimately at the receiving end of these lapses and to whom in good grace, an apology would not be out of place.

2. Though the record of this case is relatively bulky, the dispute is within a narrow ambit. Briefly stated, the petitioner joined the erstwhile Corporation Bank as a Clerk on 1-3-1961 and was first promoted as an Accountant in the year 1967. He was then promoted as Manager and posted to the Regional Office of the Bank at Bombay in August, 1975. In October, 1976 he was posted as a Branch Manager in the newly opened office at Nagpur after which he was transferred from Nagpur to Mangalore in December 1978.

3. The subject-matter of the present dispute is with regard to what transpired when the petitioner was incharge of the Nagpur Branch. It is his case that he was an excellent officer and that the Bank had issued a series of commendatory letters to him which are Annexures-A, B, C, D, E, F and G and he contends that this supports his submission that he was a really good officer. He also points out that being a new Branch, he was repeatedly instructed to mobilise the deposits and even though the target was Rs. 32 Lakhs, he had exceeded this by securing deposits of Rs. 36 Lakhs. The real trouble started when the inspection of the Nagpur Branch was done and the Regional Manager pointed out that there were a number of irregularities essentially concerning overdrafts and cash debts relating to accounts which had been overdrawn and that this should have been reported to the Head Office. The petitioner was directed to regularise this. What followed thereafter is being summarised by me because even though I have gone through the entire record of the case, letter by letter and document by document, I do not consider it necessary to set out any elaborate details. The petitioner contends that his health had broken down and that he was initially sanctioned medical leave on 9-4-1977 after which leave was refused and a virtual battle commenced between him and the management. The petitioner contends that the Bank was acting high handedly and in a totally inconsiderate manner, whereas, it is the case of the respondent-Bank that the petitioner started adopting, delaying, dilatory and evasive tactics and that he was unjustifiably and unauthorisedly absent. The petitioner was served with a show-cause notice dated 29-1-1979 which essentially related to a series of irregularities pertaining to sanctioning of loans or overdraft facilities in excess of the limits prescribed. To this, the petitioner submitted three replies. The first of them is dated 22-2-1979, wherein he denied that there are any irregularities. In the second of them dated 6-3-1979 he pointed out that he was new and virtually unassisted in Nagpur, that he was subject to harassment and mental torture, that he had many handicaps such as deficient staff and that therefore, nothing of the

alleged irregularities could come within the ambit of misconduct. There is another lengthy representation dated 16-3-1979 wherein the petitioner has dealt with each of the allegations item-wise and has tried to point out that there is not a single charge of misappropriation or moral turpitude. He submitted that at the highest, they constituted procedural irregularities. He also emphasised the fact that such problems were common to Branch Managers and that the Bank itself understood this and afforded them opportunities for rectification. The last representation is dated 20-3-1979. The Bank was not satisfied with the explanations and the petitioner was therefore issued with a charge sheet dated 23-7-1979. On 29-12-1979 the petitioner was informed about conducting an enquiry against the alleged charges and on 5-1-1980, he received a memo stating that an enquiry will be held on 4-2-1980. It is the petitioner's case that the dates of the enquiry were not properly communicated to him and furthermore, that there is valid ground for his not having participated in the enquiry whereas the Bank contends that the petitioner was afforded a reasonable opportunity and that he deliberately abstained himself from the enquiry. The Enquiry Officer submitted his report dated 31-10-1980 and the Bank issued the second show-cause notice to the petitioner dated 10-11-1980 to which the petitioner submitted an explanation dated 11-12-1980 inter alia contending that he desired inspection of certain records. By reply dated 20-12-1980 the petitioner was asked to inspect the records and the petitioner replied on 2-1-1981 stating that he was proceeding to Nagpur for this purpose on 21-1-1981. The petitioner was finally informed that he should inspect the documents before 31-1-1981. By order dated 9-2-1981 the petitioner was dismissed from service and the petitioner submitted a representation against that order as late as on 21-12-1981. By reply dated 31-12-1981 the petitioner was informed that no appeal would be entertained obviously because the dismissal order had assumed finality. The petitioner has ultimately challenged the order of dismissal through the present petition. I need to only refer to one more aspect of the case namely that the petitioner has contended that he has been subjected to double jeopardy in so far as the bank had also instituted a prosecution against him and the petitioner relies heavily on the fact that the Criminal Court has acquitted him. At the hearing, his learned Counsel submitted that the finding of judicial forum virtually concludes the case in favour of the petitioner once it is held that the competent Court has acquitted him. The Bank's learned Counsel has refuted this argument principally on the ground that the Criminal Court was only concerned with the limited question as to whether an offence under the IPC was established or not and he submitted that the disciplinary proceeding dealt with an entirely different facet namely the observance of banking norms and the consequences of proven breaches. I am in total agreement with the submission canvassed on behalf of the respondents because there may be a category of cases wherein Bank employees can be prosecuted and convicted if it is established that they were parties to a fraud or if it is established that they have otherwise committed criminal offences. There is however a larger section of cases wherein criminal offences of the traditional

type may not be involved and the most common of these constitute the type of charges that were levelled against the petitioner. It was pointed out that the advances and over drawings that were permitted were in total breach and violation of banking norms and directions both of which bound the petitioner. Such actions cannot be categorised as procedural lapses nor can they be condoned on the ground that such things are common in the banking sector, while certain levels of discretions are always invested in the Bank Officers, if it is disclosed that huge amounts of money are allowed to be drawn by the customers without valid justification, it would be impossible to argue that the authority who permitted it was not aware of what was happening or that he did it in good faith. I need to point out here that Courts will have to take judicial notice of the fact that the Bank Officer is effectively a custodian of the institution's funds over which he has dominion and that if in these circumstances funds are freely made available to parties in excess of what is permissible, that a straight inference of mala fides and dishonesty is an irresistible conclusion. In case after case the Courts have come across situations in which there is an irresistible inference of sharing the spoils and in this background, the onus would shift to the errant employee of establishing bona fides and good faith. The normal presumption of innocence that holds good in criminal trials cannot be pressed into service as far as this category of proceedings is concerned. Under these circumstances, the contention that the petitioner was subjected to double jeopardy is totally untenable because such a grievance can only be valid in those of the instances where one of the two remedies is totally unjustified.

4. I need to clarify here that as far as a situation of this type is concerned that the Bank would be justified in prosecuting the errant employee if the record of the case indicates fraud or dishonest action and where wrongful loss has occurred to the institution. The reason for this is because it is unfortunate but true that where employees are dealing with large amounts of money and where they have as a result of the misconduct made large amounts of money, that they are least bothered by the orders passed in disciplinary proceedings because even an order of dismissal or removal from service still does not require them to make good those amounts. Where public institutions are involved, the need for prosecution arises in two ways. Firstly that it is in the public interest that persons who display lack of honesty while dealing with public funds require to be prosecuted and secondly because the investigating agency is invariably put in a position to recover the greater part of the lost funds. Undoubtedly, the employee has every right to defend himself in that proceeding and the Court will ultimately decide as to whether a criminal offence has been made out or not. I need to also record here that several technicalities apply as far as criminal jurisprudence is concerned and that the degree of proof is also abnormally high. The ingredients of the offences are within a straight jacket and if any of these requirements are not forthcoming, the accused will be acquitted. There are even instances where the accused are acquitted by the Court due to the poor handling of the case by the prosecution, the non-production of evidence or material witnesses are

several unfortunate factors that have now become rather common around the Criminal Courts. Coupled with this is a situation whereby an accused is entitled to the benefit of doubt and I refer to these aspects of the matter because the argument that was canvassed before me is that the verdict of the Criminal Court wherein the petitioner was acquitted in respect of heads of charge that pertained to the subject-matter of the enquiry would ipso facto have the effect of rendering the dismissal order unsustainable. This position does not hold good on the facts of the present case because the essential ground on which the petitioner was charge sheeted related to breach of banking norms and procedures which was not the charge before the Criminal Court. There may be a small category of cases where the decision of the competent Court would hold good as far as the parallel disciplinary proceedings are concerned but this is not necessarily the position in all cases. I need to illustrate that the typical situation of a Bank Officer permitting huge amounts to be overdrawn or a Bank Officer granting huge advances to a client without adequate security or knowing fully well that those funds will be irrecoverable may not strictly come within the ambit of a charge under the IPC but would, where the amounts are substantial, fully justify an order of dismissal in departmental proceedings. This being the position, neither the contention of double jeopardy nor the submission that the decision of the Criminal Court binds the Bank in the present case can be upheld.

5. Essentially, the petitioner has sought to contend that this was an ex parte decision and he blames the Bank squarely for this. His case is that he was not aware of the dates of hearing of the enquiry. His learned advocate has submitted that nothing prevented the Enquiry Officer from summoning the petitioner even if he had not appeared and that the hurry with which the enquiry was concluded clearly displays bias on the part of the Bank and learned Counsel went to the extent of submitting that because the Bank was unhappy over what had transpired earlier when the petitioner was unable to attend to his duties because of his health problem, was taken as an act of defiance, and that the Bank had prejudged the case and had decided to dismiss him, and consequently that the enquiry was an empty formality.

6. Digressing here, I need to point out that the petitioner did originally apply for medical leave on 9-4-1977 and there was virtually a running battle between him and the Bank because it is the case of the Bank that nothing was seriously wrong with the petitioner and that this was a sham excuse. I have very carefully dissected the evidence on record for purposes of satisfying myself as to whether the petitioner was genuinely ill and if so to what extent. I do find that there was some justification for the petitioner to have applied for medical leave and that the attitude of the Bank was unduly harsh. I do not desire to say anything beyond this, because, I am satisfied that the authorities were undoubtedly annoyed with the petitioner for having pleaded illness and they were of the view that there was nothing seriously wrong with him. I have used the expression seriously wrong because it would make all the difference insofar as if the illness was a crippling one or if the petitioner was so seriously ill that he would not have

been in a position to deal with the enquiry and defend himself, the position would have been different. That is not the case on the record before me and it is very clear that the petitioner for obvious reasons, decided not to participate in the enquiry.

7. I have dealt with the contention raised by the learned Counsel wherein he assails the enquiry and the dismissal order on the ground that these are in breach of the rule of natural justice. The respondent's learned Counsel has vehemently refuted this position and he submits that the petitioner had adequate notice and if he has not responded to the notice that he cannot complain. I need to make it very clear that the principles embodied in the rules of natural justice are often misunderstood. The law does not require that an errant employee must be given unlimited opportunities or that the disciplinary authority is required to wait indefinitely and allow enquiries to be dilated for years together on all sorts of frivolous grounds. It has become the order of the day to draw subsistence allowance, to work elsewhere and to protract the enquiries for years together knowing fully well that there is a life span even for witnesses and documents, that there are availability problems and delay has its own benefits to delinquents. The Courts will therefore have to very clearly lay down that the opportunity afforded shall be once and only once and that it shall also be time bound. The record of the present case indicates that despite being aware of the enquiry, that the petitioner did not participate in it and the technical pleas advanced by him with regard to non-information of the subsequent dates cannot avail him. It is true that the enquiry was ex parte but the petitioner cannot make any grievance of this because he refused the opportunity to take part in the proceedings.

8. As far as the order of dismissal is concerned, I find that it was preceded by a second show-cause notice and a copy of Enquiry Officer's report. The petitioner again tried to dilate the proceedings on the ground that he was proceeding to Nagpur to inspect the documents whereas this is something that ought to have been done prior to the commencement of the enquiry. In any event, on the basis of the material before the disciplinary authority, an adverse order vis-a-vis the petitioner was inevitable. I need to only deal in passing with what happened thereafter. The petitioner was a senior officer of the Bank of the rank of Branch Manager and he was more than fully aware of the fact if he desired to appeal against the order that there was a prescribed procedure for this and a time limit within which it had to be done. The petitioner did not comply with either of these requirements and his grievance that his right of appeal was rendered infructuous is also devoid of substance.

9. The learned Counsel on both sides have referred to a plethora of judgments in support of the various contentions raised by them. The principles of service law with regard to these aspects of the case are well-defined, well-settled and I do not need to burden this judgment by reproducing all those decisions. Suffice it so say that I have carefully analysed the facts and the law in each of the cases cited and have followed the well-defined principles while deciding this case.

10. This is a rather unusual case and it therefore qualifies for unusual reliefs. Normally, on the facts of the present case this petition ought to have been dismissed. There are however two areas with regard to which the petitioner would qualify for reliefs. The first of them being that I do not find from the record that the petitioner had been formally suspended. It is his contention that he has not received his salary with effect from 29-1-1979 and the contention of the Bank is that he was not entitled to any salary as he was unauthorisedly absent from duty. On the material before me, I am not satisfied that the Bank was justified in adopting this contention. If the petitioner was guilty of misconduct, under the Service Regulations, it was permissible for the Bank to place the petitioner under suspension and the petitioner would have been entitled to his full salary had the disciplinary proceeding ended in his favour. In the alternative, if the dismissal order had been upheld, he would not have been entitled to the difference. Irrespective of whether the petitioner was behaving in a difficult manner and the fact that the Bank officers were annoyed with him, the institution could not have abdicated its own duties vis-a-vis procedural requirements of service law. Under these circumstances the petitioner would be entitled to receive from the Bank normally, his unpaid subsistence allowance for the period 29-1-1979 upto the date when the dismissal order was passed i.e., 9-2-1981. The Bank did not however pass a formal order of suspension and under these circumstances the petitioner cannot suffer for the lapse on the part of the Bank. The respondents shall therefore be required to compute the full salary and allowances payable to the petitioner for this period i.e., 29-1-1979 to 9-2-1981. Also, since considerable time has elapsed and the respondents are a banking institution, the respondents shall compute the interest payable on the amount from 9-2-1981 upto the date of payment to the petitioner at the highest rate payable on fixed deposits from time to time and shall pay over the aggregate amount to the petitioner within a period of twelve weeks from the date of decision of this petition.

11. I have very carefully examined the charges levelled against the petitioner, the amounts of money involved and the explanations put forward by the petitioner. While the Bank was justified in having instituted disciplinary proceedings against him, the gravity of the charges is not serious enough to have warranted an order of dismissal. The petitioner has demonstrated that his track record was good but this cannot justify acts of subsequent misconduct, The well-settled principle of law that the punishment awarded must bear a very clear and fair nexus to the gravity of the misconduct and the established charges would not justify the passing of a dismissal order in the present case. To my mind, an order of removal from service or discharge from service would have been the correct and appropriate order and this being the position, it would make some difference insofar as the petitioner would be entitled to receive his terminal benefits. The respondents are directed to compute this amount and to pay over the same to the petitioner along with interest calculated in the same manner as indicated by me earlier within an outer limit of twelve weeks from today.

12. In the result, the petition partially succeeds. The order or dismissal passed against the petitioner is modified to one of removal from service and consequently, the petitioner would be entitled to receive his terminal benefits. For the reasons earlier indicated by me, the petitioner would also be entitled to receive his full salary and allowances along with deemed promotions if any for the period from 29-1-1979 to 9-2-1981 along with interest to be computed in the manner as indicated earlier. The Bank shall be required to compute these amounts and to pay over the same to the petitioner within an outer limit of twelve weeks from today. I need to clarify that on the amounts payable to the petitioner there would undoubtedly be the question of deduction of tax at source. It is open to the petitioner to inform the Bank within the period of twelve weeks, as to what would be the most beneficial manner in which the tax should be deducted in his case and the Bank shall accordingly follow this request.

13. The petition partially succeeds. In the facts and circumstance of this case, the petitioner shall be entitled to costs of the petition computed at Rs. 2,000/-.