
(2014) 07 AP CK 0066
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 819 of 2005

M.S. Vohra

APPELLANT

Vs

The Andhra Bank

RESPONDENT

Date of Decision : 03-07-2014

Acts Referred:

Marine Products Export Development Authority Act, 1972 — Section 33

Citation : (2015) 6 ALD 529

Hon'ble Judges : M. Satyanarayana Murthy, J;L.N. Reddy, J

Bench : Division Bench

Advocate : J. Sudheer, Advocate for the Appellant; Lakshmi Narasimha, Advocate for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—This writ appeal is filed by the petitioner in W.P.No. 3923 of 1995.

2. For the sake of convenience, the parties herein are referred to as arrayed in the writ petition.

3. The petitioner joined the service of Andhra Bank in the year 1976 as Scale-II Officer. Over the period, he earned promotions and by 1992, he reached the stage of Senior Management IV. Disciplinary proceedings were initiated against him by issuing several charge sheets. In relation to the charge sheet dated 12.02.1988, the disciplinary authority passed an order dated 30.04.1992 imposing the punishment of censure. Aggrieved by that, the petitioner filed a departmental appeal provided for under the Andhra Bank Officer Employees (Discipline & Appeal) Regulations, 1981 (for short the Regulations).

4. Even when the appeal was pending, the Executive Director & Reviewing authority, the 2nd respondent herein, issued a show cause notice dated 26.06.1992 to the petitioner, in exercise of power under Regulation 18 requiring him to explain as to why a higher punishment be not imposed. The petitioner

submitted explanation on 01.07.1992. Not satisfied with that, the 2nd respondent passed an order on 08.07.1992 imposing the punishment of reduction of basic pay by one stage for a period of one year. Challenging the same, the petitioner filed W.P.No. 3923 of 1995 before this Court. The writ petition was dismissed through order dated 16.09.2004 only on the ground that W.P.No. 19446 of 1994 filed by the petitioner in relation to some other proceedings was dismissed. Hence, this writ appeal.

5. Heard Sri J.Sudheer, learned counsel for the appellant, and Dr.Lakshmi Narasimha, learned counsel for the respondents.

6. One after the other, charges sheets were issued to the petitioner alleging certain acts and omissions in the course of discharge of his duties. While some of them were voluntarily withdrawn by the management itself, some were enquired into. In relation to the charge sheet dated 12.02.1988, the Enquiry Officer is said to have submitted a report holding that the charges are proved. Taking the same into account, the appointing authority i.e., the 4th respondent passed an order dated 30.04.1992, imposing the penalty of censure. The petitioner filed an appeal before the 3rd respondent.

7. Even when the appeal was pending before the 3rd respondent, the 2nd respondent issued a show cause notice dated 26.06.1992. He made a detailed reference to the nature of allegations, the factum of the Enquiry Officer holding that the charges are proved, and the imposition of punishment. He ultimately stated as under:

I have, therefore, come to the conclusion that the punishment of censure awarded by the Disciplinary Authority is not commensurate with the gravity of the misconduct i.e., negligence in discharge of official duties, failure to safeguard and protect the interests of the Bank and suppression of the material facts from the knowledge of higher authorities and it deserves a more deterrent punishment.

8. He required the petitioner to explain as to why the punishment of censure be not set aside and penalty of reduction of basic pay by one stage shall not be imposed.

9. On receipt of show cause notice, the petitioner submitted explanation on 01.07.1992. He has drawn the attention of the 2nd respondent to the fact that an appeal in terms of the Regulations, is already pending before the 3rd respondent against the order of censure. He has also stated that the charges framed against him were trivial and that the disciplinary authority himself felt that imposition of punishment of censure is sufficient.

10. It is rather curious to note that the 2nd respondent has treated that the pendency of the appeal is not a bar for exercise of powers of review by him. He made that aspect very clear in paragraph 1 of his order dated 08.07.1992. On a perusal of the entire record and relevant Regulations, we are of the view that the 2nd respondent exceeded his power and jurisdiction.

11. It is not unusual that the power of review is conferred upon a superior authority to satisfy himself, about the correctness, propriety and legality of orders passed by the inferior Officers and as to whether the nature of disposal given to a particular file was proper. One of the basic things in such cases is that the show cause notice proposing to undertake suo motu review must indicate as to why a different view be not taken. The final decision to differ with the findings of the inferior authority must be relegated to the State subsequent to the submission of explanation. If the show cause notice itself indicates that the authority is convinced that the order passed by the inferior authority is wrong or incorrect, a serious flaw creeps into the entire proceedings. It brings about a case of pre- determining the issue. That is what exactly has happened in the instant case. Even while issuing the show cause notice, the 2nd respondent mentioned that he has come to the conclusion that the punishment of censure is not commensurate with the gravity of misconduct.

12. In *ORYX Fisheries Private Limited Vs. Union of India (UOI) and Others*, , the Supreme Court held as under:

In the instant case from the underlined portion of the show-cause notice it is clear that the third respondent has demonstrated a totally closed mind at the stage of show-cause notice itself. Such a closed mind is inconsistent with the scheme of Rule 43 which is set out below. The aforesaid Rule has been framed in exercise of the power conferred u/s 33 of the Marine Products Export Development Authority Act, 1972 and as such that Rule is statutory in nature.

13. Similar situation obtains in this case also.

14. Secondly, the reviewing authority, no doubt, is entitled to enhance the punishment. However, what punishment must be imposed and what according to him would be reasonable, can be decided only after the explanation is submitted by the employee in reply to the show cause notice. Indication of the punishment in the show cause notice itself constitutes another serious flaw. In the instant case, the 2nd respondent straightaway indicated the punishment, which he intends to impose, in the show cause notice itself and, being true to himself, he did that in the final order.

15. Apart from these two serious flaws referred to above, the stage, at which the proceedings have been initiated by the 2nd respondent, assumes significance. On being handed out the punishment of censure, the petitioner availed the remedy of appeal. It is the prerogative of the appellate authority to examine the entire record and arrive at his own conclusion. It is the same Regulations that confer power upon the appellate authority as well as the reviewing authority, may be of different magnitude and nature. The initiation of proceedings of review even while the appeal was pending amounts to gross misuse of suo motu power of review. It only indicates the lack of proper understanding on the part of the concerned Officer. The reason mentioned in the impugned order to overcome the pendency of the appeal, is indeed absurd. For all practical purposes, he has pre-

empted the appellate authority from exercising his jurisdiction.

16. We, therefore, allow the writ appeal and the order under appeal is set aside. Consequently, W.P.No. 3923 of 1995 shall stand allowed. There shall be no order as to costs.

17. The miscellaneous petitions, if any, filed in this appeal shall stand disposed of.