
(2015) 07 OHC CK 0034
In the Orissa High Court
Case No : Writ Petition (C) No. 1803 of 2003

Niranjan Sethi

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 13-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)

Citation : (2015) 07 OHC CK 0034

Hon'ble Judges : S.N. Prasad, J

Bench : Single Bench

Final Decision : Disposed off

Judgement

S.N. Prasad, J—Order of punishment dated 24.9.2001 of reduction of basic pay by one stage for one year with further direction that the officer will not earn the increment during the period but it will not have the effect of postponing future increments after one year and the order confirming the order of punishment by the appellate authority dated 25.11.2002 has been assailed by the petitioner.

2. Brief facts of the case is that the petitioner while working as Assistant Manager(Adv.), State Bank of India, Balasore-I Branch, was called upon to explain in respect to certain irregularities. Petitioner has submitted his preliminary reply. The authority being not satisfied with the preliminary reply has initiated a disciplinary proceeding with a direction upon the petitioner to appear before the Enquiry Officer. Petitioner had appeared before the Enquiry officer and the Enquiry Officer has proved some of the charges and in the rest of the charges, charges have not been proved. Petitioner thereafter was asked to give reply to the second show cause notice which he has submitted.

3. Initially Deputy General Manager being the disciplinary authority has passed order of punishment on 6.1.2001 inflicting penalty of reduction of basic pay by one stage for one year with further direction that the officer will not earn increment during the period but it will not have the effect of postponing future

increments after one year. Petitioner has assailed the order of punishment before the appellate authority vide memorandum petition dated 21.4.2001 and when it was pending petitioner was communicated with an order dated 18.9.2001 by which order of penalty dated 6.1.2011 has been withdrawn but subsequently communicated with an order dated 24.9.2001 issued by the General Manager(D&PB) and appointing authority imposing penalty of reduction of basic pay by one stage for one year with further direction that the officer will not earn the increment during the period but it will not have the effect of postponing future increments after one year. The petitioner has filed fresh memorandum of appeal before the appellate authority dated 13.11.2001, however the same was rejected as per the communication dated 25.6.2002.

4. Petitioner being aggrieved with the order of punishment has approached this Court in this writ petition.

5. Petitioner has challenged order of punishment on the ground that the disciplinary authority has not appreciated the entire aspect of the matter and passed order of punishment on the basis of perfunctory enquiry report. Enquiry Officer has found some of the charges proved but most of the charges not found to be proved which suggests that the petitioner has been proceeded without any sufficient evidence.

6. Further argument of the learned counsel for the petitioner is that initially Deputy General Manager has passed order being disciplinary authority on 6.1.2001 but subsequently it was withdrawn and thereafter fresh order was issued by the General Manager being the disciplinary authority on 24.9.2001, hence this attitude of the authorities shows non-application of mind. It has been submitted that 2nd show cause notice was issued by the Deputy General Manager before whom reply was submitted, he imposed punishment but subsequently withdrawn then General Manager passed order of punishment on the recommendation of the Deputy General Manager which clearly suggests that General Manager being the disciplinary authority has not applied his mind by considering the reply to 2nd show cause notice rather General Manager depends upon the recommendation of Deputy General Manager. This clearly shows that before imposing punishment no consideration has been given by the General Manager of the reply to 2nd show cause notice and thereby petitioner has greatly been prejudiced.

7. On the other hand, learned counsel appearing for the Bank has contested the case by referring to various paragraphs of the counter affidavit and submitted that petitioner being an employee of the bank is supposed to discharge his duty with utmost sincerity and integrity but he has failed to discharge his duty, that is the reason altogether 18 charges have been leveled out of which 5 charges have been proved, one charges has been found partly proved, hence the disciplinary authority after following all procedure laid down under Discipline and Appeal Rules/Regulations has imposed minor punishment. He further submitted that the order passed by the Deputy General Manager at the initial stage has

subsequently been withdrawn on the ground that the General Manager was the disciplinary authority and thereafter the disciplinary authority has passed order of punishment by which the petitioner has not at all been prejudiced because same punishment was imposed which was imposed by the Deputy General Manager on the earlier occasion by virtue of order dated 6.1.2001. He further submitted that the disciplinary authority or the appellate authority after going through the entire enquiry report has found the order of punishment justified.

8. Heard learned counsel for the parties and perused the materials on record.

9. Petitioner was working in the bank as Assistant Manager and while he was functioning at Balasore-I Branch a memorandum of charge was issued upon him alleging therein all together 18 instances of irregularities which pertains to lack of diligence and sincerity in discharging of official duty. For better appreciation charges are being quoted hereinbelow imputation wise.

"(i) Imputation No. 1 - Shri Sethi sanctioned housing loan of Rs. 50,000/- to Shri Dayanidhi Biswal on 02.08.96 but he had already constructed the building prior to the sanction of the housing loan. A sum of Rs. 45,000/- was disbursed to him in one instalment on 30.08.96.

(ii) Imputation No. 2 - Finance made to the borrowers in case of ACC loans for purchase of fertilizer was credited to the accounts of three(3) non-existent suppliers aggregating Rs. 7.64 lacs in the months of August, 96.

(iii) Imputation No. 3 - Photographs were not obtained in case many Acc/ATL loan accounts viz, Acc 17/44550, 15/3800, 3801, 3755, 3768, 3774, 3779 and others.

(iv) Imputation No. 4 - Loans were disbursed without filling up the documents viz, ACC 4145, 4125, SCFC ATL 24,25,38 & 39.

(v) Imputation No. 5 - Repayment schedules were not fixed in respect of some loan accounts, viz, ACC 4058, 4107, SCFC ATL-24.

(vi) Imputation No. 6- Date and place of execution of documents were not mentioned in case of may ACC loans viz; ACC 17/4008 to 4013 and others.

(vii) Imputation No. 7 - Amounts of loans applied for in case of many loan documents (ACC & ATL) have been changed without authentication by the borrowers viz; ACC 17/4019, 4008, 4013, 4023, 4014, 4015, 1017 and others.

(viii) Imputation No. 8 - Arrangement letters are undated in case of many ACC loan documents viz; Acc 17/4201,4217,4218,4222,4230,4232,4233,4235 and others.

(ix) Imputation No. 9 - LTI of borrowers are not witnessed in respect of many loan accounts viz; ACC 4189, 4181, 4177, 4157,4166, 4199 and others.

(x) Imputation No. 10 - Loans were extended to some persons in the same family without assessing the actual credit needs, i.e. ACC 4022, 4025, 2034,

4033, 4022, 4094, 4096, 4098, 4021, 4035, 4028, 4038, 4024, 4047, 4105, 4114, ATL 224, IRDP TL 5666, 17/4035 and others.

(xi) Imputation No. 11 - administrative approval from the Controlling Office for financing to those borrowers who happened to be the relatives of the staff members was not obtained viz., ACC 17/4057, 4058, ATL 1/228.

(xii) Imputation No. 12 - Fresh advances were made to defaulters who had not liquidated their earlier loan accounts viz.,

(xiii) Imputation No. 13 - Shri D.C. Nayak was deputed to Calcutta twice for obtaining two SC advices (Rs. 819/- and Rs. 759/-) without approval from the Controlling office.

(xiv) Imputation No. 14 - Shri Sethi was discharging the duties of the Cash officer in addition to his own duty although officiating Cash Officer was present in the branch on some occasions viz., 08.05.96, 10.05.96, 17.05.96, 18.05.96, 21.05.96, 22.05.96, 24.05.96, 28.05.96, 03.06.96, 04.06.96, 08.06.96, 11.06.96, 12.06.96, 19.06.96, 25.06.96 to 03.07.96, 09.07.96 to 19.07.96, 22.07.96, 24.07.96 to 29.07.96.

(xv) Imputation No. 15 - Shri Sethi had availed a DL of Rs. 33,900/- against the STDR for Rs. 33,738/- without obtaining prior approval of the Controlling Office.

(xvi) Imputation No. 16 - Serious irregularities had surfaced in the conduct of Shri Sethi's account with the Bank viz., (i) transactions in the current account were disproportionate to his known sources of income (ii) total credit summation/debit summation during March, 95 to Nov, 96 were Rs. 5,93,556.92 and Rs. 6,71,090.42 respectively.

(xvii) Imputation No. 17 - 10 HP Marine pump sets were supplied to the borrowers for Marine Shipping finance, whereas bills for 20 HP machines were paid viz. Marine Tern Loan Account Nos. 39,45,46.

(xviii) During the month of August'96 a large number of crop loans for Rs. 17.23 lacs were sanctioned (ACC 17/4013 to 17/4260) and disbursed even after the joining of the new Branch Manager overlooking the internal housekeeping position such as interest application, for half year ended May'96 in AGL segment, quarter ended June'96 for other segments and submission of quarterly returns etc."

10. After serving memorandum of charges the petitioner was directed to appear before the Enquiry Officer. Petitioner had appeared and given his defence reply. Enquiry Officer after appreciating the entire aspect of the matter has found Imputation Nos. 3,4,5,7 and 9 as proved and imputation No. 10 as partly proved.

11. Now it is necessary to discuss the imputations which have been found to be proved which is Imputation No. 3 which relates to not obtaining photographs in case of many accounts. Enquiry Officer after appreciating defence reply of the petitioner has come to finding that four photographs are found in the Branch but

their identity could not be established. This imputation has been proved by the prosecution by producing documentary evidence by way of illustration, hence imputation has been found to be proved.

12. Imputation No. 4 which has also found to be proved by the Enquiry Officer relating to disbursement of loan without filling up of documents. Enquiry Officer on the basis of material produced before him by the defence has come to finding that loans were disbursed without filling up of documents.

13. Imputation No. 5 which has also found to be proved which relates to non-fixation of repayment schedule in respect of some loan accounts. Enquiry Officer on the basis of the documents produced before him by the presenting officer has found the charge proved.

14. Imputation No. 7 which has also found to be proved which relates to change in documents pertaining to many loan Accounts without authentication by the borrower which has also found proved on the basis of documents produced by the presenting officer.

15. Imputation No. 9 which has also found to be proved by the Enquiry Officer which relates to not witnessing LTI of borrowers in respect of many loan accounts.

16. Imputation No. 10 which has partly been proved.

17. The Enquiry Officer after proving these imputations of charges has proved and partly proved has recommended the same before the Deputy General Manager, disciplinary authority, who after its receipt has issued second show cause notice which has been duly been replied by the petitioner and the Deputy General Manager has imposed punishment on 6.1.2001 of reduction of basic pay by one stage for one year with further direction that the officer will not earn the increment during the period but it will not have the effect of postponing future increments after one year in terms of Rule 68(1)(ii) of the State Bank of India Officers Service Rules.

18. Petitioner has preferred appeal before the Chief General Manager being the appellate authority reasoning the infirmity and non-consideration of reply given by the petitioner before the Enquiry Officer and the disciplinary authority, that is Deputy General Manager vide memorandum of appeal dated 21.4.2001 but in the meanwhile order passed by the disciplinary authority has been acted upon by the opposite party-Bank as would be evident from the order as contained in communication dated 20.4.2001(Annexure-13).

19. Petitioner all of a sudden was in receipt of one communication dated 18.9.2001 issued under the signature of deputy General Manager & Disciplinary Authority with reference to penalty dated 6.1.2001 addressed to the Aradi Branch communicating the petitioner with respect to withdrawal of order of penalty dated 6.1.2001. After receipt of the communication dated 18.9.2001 the General Manager has passed fresh order on 24.9.2001 imposing penalty of reduction of basic pay by one stage for one year with further direction that the

officer will not earn the increment during the period but it will not have the effect of postponing future increments after one year.

20. Petitioner thereafter has filed fresh memorandum of appeal before the appellate authority against the order of punishment pointing out infirmity committed by the disciplinary authority upon which appellate authority has passed an order on 25.6.2002 rejecting the appeal confirming the order of penalty.

21. Petitioner being aggrieved with these orders of penalties has filed this writ petition on the following ground:--

"(1) Impugned order of punishment has been assailed on the ground that the second show cause notice was issued by the Deputy General Manager after receipt of the enquiry report of the Enquiry Officer who had issued second show cause notice, petitioner has given his reply before the Deputy General Manager who has imposed punishment impugned, but thereafter it was withdrawn and again the Deputy General Manager has passed order on 24.9.2001 treating the order dated 6.1.2001 as recommendation, hence it has been submitted by the learned counsel for the petitioner that reply given by the petitioner has not at all been considered by the disciplinary authority who admittedly was the General manager and after second show cause notice having been issued by the Deputy General Manager cannot be said to be competent authority for imposing any punishment."

22. Here the petitioner has raised pertaining to the issue regarding non-application of mind by the disciplinary authority by submitting that General Manager being the appointing authority was the disciplinary authority of the petitioner, hence Enquiry Officer ought to have submitted the enquiry report before the disciplinary authority i.e. the General Manager, the appointing authority who has supposed to take decision for imposing penalty upon him but the order of penalty has been passed by the Deputy General manager after consideration of reply given by the petitioner in terms of second show cause notice thereafter it was withdrawn and again same order has been passed by the General Manager, hence submission has been made that appointing authority being the disciplinary authority has not applied his quasi-judicial kind by not considering reply given by the petitioner.

23. In order to appreciate this argument it is necessary to see relevant records of the case. Admittedly, in this case Enquiry Officer has submitted the enquiry report before the Deputy General Manager & Appointing Authority who after its appreciation has imposed order of punishment vide order dated 6.1.2001, it has been given effect to thereafter it has been withdrawn and again a fresh order was passed by the General Manager & Appointing Authority on 24.9.2001.

24. On perusal of the order dated 6.1.2001 it is evident that the Deputy General Manager after considering the entire facts has passed order of punishment. Order of punishment has been given effect to. Order dated 6.1.2001 has been

withdrawn, fresh order was passed by the General Manager & Appointing Authority imposing punishment of reduction of basic pay by one stage for one year with further direction that the officer will not earn the increment during the period but it will not have the effect of postponing future increments after one year.

25. From perusal of the order dated 24.9.2001 it is evident that the decision taken by the Deputy General Manager on 6.1.2001 has been treated to be recommendation by the General Manager & Appointing Authority and thereafter order was passed on 24.9.2001.

26. From perusal of the relevant discipline rule, it is apparent that the General Manager is the Appointing Authority and the disciplinary authority of the petitioner being in Junior Management Grade-I.

27. Admitted position in this case is that the petitioner has given his reply before the Deputy General Manager who has issued second show cause notice. This suggests that the General Manager who was the appointing authority of the petitioner had never been any occasion to go through the finding of the enquiry report. Petitioner has submitted reply to second show cause notice before the Deputy General Manager who has gone through the contents of the reply and imposed order on 6.1.201 but not being the disciplinary authority, the order was withdrawn thereafter fresh order was passed by the General Manager on 24.9.2001.

28. On these pretext it is to be seen whether reply submitted by the petitioner to the second show cause notice was at all been considered by the disciplinary authority who was the General Manager, answer will be in negative because from perusal of the order dated 24.9.2001 General Manager being disciplinary authority has passed order of punishment on the basis of the decision already taken by the Deputy General Manager, which decision has been treated to be recommendation by the General Manager concern, hence it can be gathered that the General Manager has not applied his mind regarding consideration of reply to the second show cause notice given by the petitioner.

29. It is well settled that the public officer against whom disciplinary authorities are intended to take action is entitled to have opportunity before disciplinary action is finally taken against him. If the findings of the enquiry report are against the public officer and the appointing authority agrees with the said finding a stage has reached for giving another opportunity to the public officer to show cause why disciplinary action should not be taken against him. In issuing the second show cause notice punishing authority has actually come to definite conclusion about the guilt of the officer as well as punishment which will meet requirement of justice in his case and it is only after reaching conclusion although this is provisionally for the appointing authority to issue second show cause notice. In respect to the notice, public officer is entitled to show cause actually any action is to be taken, it is valid or correct of the finding recorded by

the Enquiry Officer and provisionally accepted by the appointing authority. In other words, second opportunity comes to the public officer to cover whole ground and to place that no case has been made out against him for taking disciplinary action and then to urge that he fails in substantiating his innocence, action to be taken against him either unduly served or not called. It would be seen that object of the second show cause notice is entitled a public servant to satisfy the punishing authority on both the grounds. Thus, second opportunity by way of second show cause notice is factually right which is to be considered by the authority who is empowered to impose punishment.

30. Constitutional provision as contained in Article 311(2) also needs to be referred here which provides sufficient and adequate opportunity to delinquent employee before taking any disciplinary action. Adequate and sufficient opportunity also includes consideration of reply by the authority who is taking disciplinary action, before taking such action mere formality cannot be done, there must be actual consideration.

31. In this regard judgment of the Supreme Court in the case of Chairman, LIC of India and Others Vs. A. Masilamani, (2013) 136 FLR 81 : (2013) LLR 301 : (2012) 11 SCALE 413 : (2013) 6 SCC 530 : (2013) 2 SCT 283 wherein at paragraph 19 it has been held that:

"The word "consider" is of great significance. The dictionary meaning of the same is, "to think over", "to regard as", or "deem to be". Hence, there is a clear connotation to the effect that there must be active application of mind. In other words, the term "consider" postulates consideration of all relevant aspects of a matter. Thus, formation of opinion by the statutory authority should reflect intense application of mind with reference to the material available on record. The order of the authority itself should reveal such application of mind. The appellate authority cannot simply adopt the language employed by the disciplinary authority and proceed to affirm its order."

32. Thus second show cause notice cannot be said to be a mere formality and it has been issued it needs proper consideration by the competent authority otherwise there would be no relevance in issuing second show cause notice. Merely following the procedure does not amount to extending justice to the employee rather it is to be seen actually justice has been done.

33. In this case although second show cause notice has been issued but not by the competent authority as provided under the Discipline and Appeal Rule but however same has been rectified by withdrawing order of punishment dated 6.1.2001 but on the basis of same order dated 6.1.2001 the General Manager being the disciplinary authority has passed order on 24.9.2001 imposing same punishment which means that the disciplinary authority has not applied his quasi-judicial mind regarding consideration of reply submitted by the petitioner in terms of the second show cause notice. The disciplinary authority is not supposed to pass order on the basis of the recommendation of his subordinate

authority rather he is supposed to pass order on the basis of materials available before him, that is, enquiry report, reply to show cause notice and other relevant documents so that he may be able to take independent view after application of quasi-judicial mind.

34. It is settled that in the matter of imposing punishment by the disciplinary authority, this Court sitting under Article 226 of the Constitution of India cannot reverse the fact finding given by the disciplinary authority.

35. Hence, without expressing any opinion upon the merit of the case and in view of the discussions made hereinabove, in my considered view, the petitioner has been deprived from his right of consideration of his reply to the second show cause notice by the disciplinary authority who has passed order of punishment merely on the basis of the recommendation of the Deputy General Manager.

36. In view of the reasons given hereinabove, impugned order dated 24.9.2001 is hereby quashed, in result subsequent order passed by the appellate authority dated 25.6.2002 is also quashed.

37. Matter is remitted before the appointing authority i.e. General Manager to pass fresh order in accordance with law within reasonable period preferably within period of eight weeks from the date of presentation of certified copy of this order.

38. The writ application is accordingly disposed of.

39. Issue urgent certified copy.