
(2001) 07 KAR CK 0002
In the Karnataka High Court
Case No : Writ Petition No. 31111 of 1994

N.P. Kudva

APPELLANT

Vs

Syndicate Bank, Head Office, Manipal and Others

RESPONDENT

Date of Decision : 13-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) ILR (Kar) 4254 : (2001) 6 KarLJ 304 : (2001) 4 KCCR 361 SN

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

Bench : Single Bench

Advocate : Pramod V. Khatavi for M.L.N. Reddy, for the Appellant; Ramdas for Sundaraswamy Ramdas and Anand, for the Respondent

Judgement

1. An employee officer of the respondent-Syndicate Bank questions in this petition filed under Article 226 of the Constitution, the legality or otherwise of the orders made by the disciplinary authority dated 16-6-1994 and the orders made by the Appellate Authority dated 14-9-1994.

2. Brief facts are:

While petitioner was working as a Chief Manager in Faridabad Branch of respondent-Syndicate Bank, he was served with a charge memo dated 15-7-1987 alleging that he had committed certain acts of misconduct during the period 1-8-1983 to 18-3-1986. The charge memo had been replied and an enquiry officer had been appointed to enquire into the allegations made in that charge memo. After completion of the enquiry proceedings, the disciplinary authority of the Bank had imposed a punishment by his order dated 30-1-1991 and that order has been confirmed by the Appellate Authority. The same has reached finality, in the sense petitioner has not questioned the decision made by the Appellate Authority before any other forum.

3. For the same period, namely 1-8-1983 to 18-3-1986, another charge memo dated 1-10-1991 came to be served on the petitioner. The sum and substance of

the allegations in that charge memo is that, he had violated the guidelines issued by the Bank in allowing the customers for over-drawls etc. The allegations made in this charge memo is similar to the one which had been issued earlier and the enquiry proceedings are completed.

4. The enquiry officer after completing the enquiry proceedings finds petitioner guilty of the charges alleged in the charge memo. Based on those findings of the enquiry officer, the disciplinary authority frames an order dated 16-6-1994 and imposes the following punishment:

"ORDER

For breach of Regulation 3(1) read with Regulation 24 of the Syndicate Bank Officer Employees" (Conduct) Regulations, 1976, the present Grade/Scale in SMGS-IV of Sri N.P. Kudva be and is hereby reduced to MMGS-III by fixing his basic pay at Rs. 4,390/-, with immediate effect.

If he so desires, Sri N.P. Kudva may prefer an appeal against the above order to the Appellate Authority, i.e., Executive Director, Head Office, Manipal within 45 days of receipt of this proceedings in terms of Regulation 17 of the Syndicate Bank Officer Employees" (Discipline and Appeal) Regulations, 1976".

5. Aggrieved by the said order, petitioner had filed an appeal before the Appellate Authority as provided under the Discipline and Appeal Regulations of the respondent-Bank. The Appellate Authority by his order dated 14-9-1994 rejects the appeal and confirms the orders made by the disciplinary authority. It is the correctness or otherwise of these orders are the subject of matter of this writ petition.

6. Sri Pramod, learned Counsel for the petitioner has raised the following issues for consideration and decision of this Court. They are:

I. The second enquiry on the same set of charges for the same period is impermissible and the same is initiated by the disciplinary authority of the respondent-Bank only to harass the petitioner.

II. The second enquiry proceedings are instituted at the instance of the Central Vigilance Commission and therefore the proceedings are bad and illegal.

III. The punishment imposed is again at the direction of the Central Vigilance Commissioner and the same is impermissible.

IV. Punishment imposed is not in accordance with the Discipline and Appeal Regulations of the Bank.

V. The documents sought for by the delinquent to effectively participate in the enquiry proceedings were not supplied to him by the disciplinary authority. Therefore the enquiry proceedings are vitiated.

7. The respondents have filed their statement of objections and in that, they resist the reliefs requested by the petitioner in this petition. At the time of

hearing of the petition Sri Ramdas, learned Senior Counsel, who is known for his fairness to the Court and to the other side, appearing for the respondent-Bank, at my request has produced before me the letter dated 4-4-1991 of the Chairman and Managing Director addressed to the Secretary, the Central Vigilance Commission, New Delhi and also the letter of the Central Vigilance Commission dated 7-7-1991. Apart from these correspondence, the learned Counsel has also produced the letter of Central Vigilance Commissioner CCVC" for short) dated 5-10-1993. I will be referring to the contents of these letters a little later.

8. The charge memo is dated 1-10-1991. In that, it is alleged that petitioner allowed/caused to be allowed exceeding of limits/overdrawals, in the Overdraft Accounts of 3 customers, namely M/s. Keshav Motors, M/s. Aravind Gas Corporation and M/s. Prakash Agro Industries during the period 1-8-1983 to 16-3-1986, when he was working as a Chief Manager at Faridabad Branch. According to the Bank, the petitioner has failed to discharge his duties with utmost integrity, honesty and diligence and exhibited conduct unbecoming the status of the Bank Officer and thus contravened Regulation 3(1) read with Regulation 24 of the Syndicate Bank Officer Employees" (Conduct) Regulations, 1976.

9. Before issuing the aforesaid charge memo, the Chairman and Managing Director of the respondent-Bank by his letter dated 4-4-1991 addressed to the CVC, New Delhi, with regard to the aforesaid omissions on the part of the petitioner had stated as under.--

"Sri N.P. Kudva was earlier served with a charge-sheet under major penalty proceedings in connection with certain credit facilities extended by him at the very same branch and on conclusion of the departmental proceedings, he was imposed with the major penalty of "reduction in basic pay by two stages in timescale of pay" in consultation with the Commission, Kind reference of the Commission in this regard is invited to its Office Memorandum No. 1R 14 BNK 6, dated 17-1-1991. The present irregularities were more or less similar to those imputed against him in the charge-sheet referred to above and pertain to the same branch. In view of this position, we recommend closure of the case against Shri Kudva with a "Recordable Warning".

Sri N.P. Kudva, KR. Shetty, K.R. Aithal, B. Krishna Murthy and P.N. Padroo are the officials of the Bank of Gazetted Status. Therefore, the case is referred to the Commission for tendering its advice".

In the penultimate paragraph, the Chairman and Managing Director has also observed as under.--

"The investigation reports of our Vigilance Unit sent herewith also reveal that Shri S.C. Joshi, M.L. Bhatia and N.S. Vimal, Assistant Managers of the branch had also allowed overdrafts in the Overdraft Accounts of M/s. Prakash Agro Industries by passing certain cheques/debit slips for amounts ranging from Rs.

1,379.90 to Rs. 5,453A. It is however, observed that the amounts of such cheques/debit slips were adjusted to other liabilities of the party like ATBD/OSL etc., at the branch. As the overdrawals allowed by these officers were for small amounts and the proceeds thereof were adjusted towards the other liabilities of the party, no action against these officers is called for and accordingly, we recommend closure of the case against them".

10. After receipt of the aforesaid communication/recommendation, the Director of CVC by its communication dated 7-7-1991 has observed as under:--

"The main misconduct attributed to Sri N.P. Kudva, the petitioner herein is that he permitted exceeding DAT AB limits of M/s. Prakash Agro Industries and M/s. Faridabad Gas Gadgets with the result that there is at present an outstanding of Rs. 34.60 lacs and Rs. 80.34 lacs for which Bank has filed a civil suit. He further observes that the total outstanding in the case of M/s. Prakash Agro Industries and M/s. Gas Gadgets alone exceeds Rs. 1.00 crore. The investigation report reveals a large number of procedural irregularities revealing a definite vigilance angle. The Commission therefore advises initiation of major penalty proceedings against Sri N.P. Kudva instead of recordable warning proposed by Syndicate Bank".

(emphasis supplied)

11. After receipt of this communication, there seems to be no further correspondence by the Chairman and Managing Director with the Director of CVC.

12. As I have already observed, the letter of the CVC is dated 7-7-1991 and the charge memo that is now issued for the second time is dated 1-10-1991. These events clearly demonstrate that, the charge memo came to be issued against the petitioner, was only at the instance of CVC. However, Sri Ramdas, learned Senior Counsel submits that the communication of the CVC dated 7-7-1991 was only in the nature of an opinion and that opinion has been taken into consideration by the disciplinary authority while initiating the domestic enquiry proceedings against the petitioner. Therefore, the learned Senior Counsel would submit that, it cannot be said that the initiation of the disciplinary enquiry proceedings against the petitioner, is at the dictation/command of CVC.

13. Having seen the recommendation of the Chairman and Managing Director and the positive directions issued by the Director of CVC, in my opinion, the learned Senior Counsel may not be justified when he says that the communication of CVC dated 7-7-1991, was only in the nature of an opinion and not a positive direction.

14. At this stage, I intend to notice the observation of the Apex Court in matters of this nature. The Apex Court in the case of Nagaraj Shivarao Karjagi Vs. Syndicate Bank Head Office, Manipal and another, , was pleased to observe that no third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the Appellate Authority as to how they

should exercise their power and what punishment they should impose on the delinquent officer. That was a case where after completion of the enquiry proceedings, the disciplinary authority had imposed a particular punishment and thereafter, it was submitted to the CVC. After receipt of the records of the enquiry proceedings and the proposal made by the disciplinary authority to impose a particular type of punishment, the CVC opines that the charges alleged and proved against the petitioner are grave in nature and therefore, no other punishment except a punishment of dismissal requires to be imposed. After receipt of that opinion/direction, the disciplinary authority imposes the punishment of dismissal of the delinquent employee officer from services of the Bank. While considering whether the disciplinary authority should have acted upon the dictation of CVC while imposing a major penalty, the Supreme Court was pleased to observe as under.--

"19. The corresponding new Bank referred to in Section 8 has been defined u/s 2(f) of the Act to mean a banking company specified in column (1) of the First Schedule of the Act and includes the Syndicate Bank. Section 8 empowers the Government to issue directions in regard to matters of policy but there cannot be any uniform policy with regard to different disciplinary matters and much less there could be any policy in awarding punishment to the delinquent officers in different cases. The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the Appellate Authority as to how they should exercise their power and what punishment they should impose on the delinquent officer (See: De Smith's Judicial Review of Administrative Action, Fourth Edition, page 309). The impugned directive of the Ministry of Finance is, therefore, wholly without jurisdiction and plainly contrary to the statutory regulations governing disciplinary matters".

(emphasis supplied)

15. The Supreme Court in the aforesaid decision has made it very clear that the 3rd party like the Central Vigilance Commission or the Central Government cannot dictate the disciplinary authority or the Appellate Authority as to how they should exercise their powers and what punishment they should impose in departmental enquiry proceedings. That means it is not only mere punishment that was the subject-matter before the Supreme Court, it was also with regard to the exercise of their powers as disciplinary authorities and Appellate Authorities under the statutory regulations.

16. Keeping in view the observations made by the Apex Court in the aforesaid decision, now let me look into the correspondence made by the Chairman and Managing Director and the directions issued by the CVC. The Chairman and

Managing Director who is head of the organisation after taking into consideration the report of the investigating officers, opines that the petitioner has already suffered a punishment of reduction in pay-scale by two stages in timescale of pay and therefore, the present irregularities that are imputed against him pertain to the same branch and for the same period and therefore recommends for the closure of the case against the petitioner with a recordable warning. This is how the head of the organisation feels about the charges that should be alleged against the petitioner. This recommendation of the Chairman and Managing Director is not accepted by the CVC. The CVC is of the view that, the recommendation of the Chairman and Managing Director need not be accepted and the disciplinary authority should initiate appropriate disciplinary enquiry proceedings against the petitioner. In my opinion, this is nothing but a direction issued by the CVC to the disciplinary authority of the respondent-Bank to initiate the domestic enquiry proceedings though the Chairman and Managing Director had recommended the closure of the case with a recordable warning against the petitioner.

17. In my opinion, this is not one of those cases where the disciplinary authority merely consults the Central Vigilance Commission before initiating the disciplinary proceedings against the employee officer of the Bank, but a case where the disciplinary authority though was of the view that no enquiry proceedings need be initiated against the petitioner, commences the proceedings at the direction/recommendation of CVC by framing the charges as directed by the CVC. This clearly demonstrates that the disciplinary authority did not apply his independent mind in framing the charges against the petitioner. Secondly, this is not one of those cases where disciplinary authority consults the Vigilance Commission but the final conclusion was arrived by it on its own, but a case where the disciplinary authority initially recommends for dropping of the enquiry proceedings but thereafter proceeds to frame charges against the petitioner on the advice tendered by Central Vigilance Commission. This also clearly demonstrates that the decision taken by the disciplinary authority was not independent but at the instance on dictation of CVC. In a departmental enquiry proceedings, there must be subjective and objective satisfaction by the disciplinary authority with regard to the allegations that should be made against the employee officer for any misconduct before initiating departmental enquiry proceedings against his own officer. He is expected to arrive at his own conclusion with regard to the misconduct which he intends to inquire into with the available material before him. This decision to initiate enquiry proceedings cannot be on the basis of the directions issued by either the Central Vigilance Commission or the Central Government. On the materials available, if it is found that the initiation of enquiry proceedings is purely based on the dictation/recommendation made by the third party, in my opinion, the same would be tainted with illegality and the initiation of enquiry proceedings cannot be sustained.

18. Now let me come to the punishment imposed by the disciplinary authority,

The Chief Vigilance Officer by his correspondence dated 23-6-1993 after completion of the inquiry proceedings insofar as the petitioner is concerned, informs the CVC as under.--

"Dear Sir,

Sub: Departmental enquiry against Sri N.P. Kudva, erstwhile Chief Manager, Sri K.R. Aithal and Sri K.R. Shetty, erstwhile Managers of our Faridabad Branch.

Ref: Your Office Memorandum No. V 14 BNK 27, dated 31-1-1992.

We invite your kind reference to the above subject:

The departmental enquiry into the charge-sheet issued to the aforesaid officials are over and we enclose herewith the following:

(I) Regarding Charge-sheet No. 194/PD/IRD/DA 3, dated 1-1-1991 issued to Sri N.P. Kudva.

(a) EO's report dated 24-3-1993 (Annexure-I(a));

(b) Inquiry proceedings (Annexure-I(b));

(c) Written brief of the PO dated 13-11-1992 (Annexure-I(c));

(d) Written brief of the DA dated 10-12-1992 (Annexure-I(D));

(e) Written submissions dated 11-5-1993 of Sri N.P. Kudva (Annexure-I(e)).

19. In the aforesaid communication the Chief Vigilance Officer does not even suggest the punishment that requires to be imposed on the delinquent charge-sheeted officer, even though the disciplinary authority suggests the imposition of particular type of penalty on the other three officers, who were also accused of more or less similar offences. In response to this correspondence, the CVC by its communication dated 5-10-1993, informs the disciplinary authority of the respondent-Bank to impose "Stiff Major Penalty" on the petitioner. The direction issued by the CVC reads as under.--

"3. The view of the charges which have been held as proved against Sri N.P. Kudva which mainly relate to allowing debit balance in current accounts of 3 parties and also taking into consideration the fact that Bank's funds to the tune of Rs. 27 lakhs have been exposed, the Commission would advise imposition of a "stiff major penalty" on Shri Kudva. While imposing the penalty on Shri Kudva, the present position of outstandings may also be verified and chances of recovery taken into consideration".

20. The disciplinary authority of the respondent-Bank though he had suggested earlier in his correspondence dated 4-4-1991 for awarding a punishment of "recordable warning", on the directions issued by CVC, imposes a penalty of reduction in rank from SMGS Grade IV to MMGS Grade III by fixing his basic pay at Rs. 4,3907- with immediate effect. This would again demonstrate that the

disciplinary authority without application of mind to the gravity of charges and the punishment that could/should be imposed, has proceeded to impose the major penalty, since it is suggested by CVC. This again, in my opinion, is contrary to the observations made by the Apex Court in N.K. Karjagi's case, *supra*.

21. Since I have answered two main issues in favour of the petitioner, in my opinion, the other issues canvassed by the learned Counsel for the petitioners pales into insignificance. Therefore, they need not be discussed by me to grant the relief requested by the petitioner. Accordingly, petition deserves to be allowed. It is allowed. Rule made absolute. The impugned order made by the disciplinary authority and confirmed by the Appellate Authority dated 16-6-1994 and 14-9-1994 are set aside. In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.