

(2000) 08 AP CK 0092

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13201 of 1998

R. Sambamurthy

APPELLANT

Vs

Chief General Manager, State Bank of India, Hyd. and others

RESPONDENT

Date of Decision : 08-08-2000

Acts Referred:

Citation : (2000) 6 ALD 51 : (2000) 6 ALT 74 : (2000) 87 FLR 902

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : Mr. Y. Venkata Sastry for Mrs. K. Malleswari, for the Appellant; Mr. K. Srinivasa Murthy SC for SBI, for the Respondent

Judgement

1. The writ petition is filed assailing the order of punishment passed by the 2nd respondent-disciplinary authority dated 11-3-1997 as confirmed by the 3rd respondent-appellate authority on 29-1-1992.

2. The petitioner, while he was working as an Officer in the State Bank of India, Payakaraopet branch (Visakhapatnam Region I), was served with a charge-sheet dated 8-9-1993 alleging certain charges under the Conduct Rules. The petitioner submitted his reply on 27-10-1993. Before the regular enquiry could commence, the petitioner made an application for furnishing certain documents. But, however, they were not furnished. Thereafter, the Enquiry Officer conducted an enquiry and found the petitioner guilty of the charges mentioned in the 1st charge. But, however, with regard to the 2nd charge, the enquiry officer found the petitioner not guilty. The enquiry officer submitted his report to the disciplinary authority on 25-7-1996. On the basis of the said enquiry report, the disciplinary authority passed orders dated 11-3-1997 removing the petitioner from service by order. Thereafter, by order dated 29-1-1998, the appellate authority also dismissed the appeal confirming the order of the disciplinary authority dated 11-3-1997. Therefore, the present writ petition has been filed challenging the order of removal passed by the disciplinary authority and as confirmed by the appellate authority.

3. The learned Counsel for the petitioner submits that the petitioner was not furnished with the document which formed the basis for framing the charges and that the respondents claimed privilege of the said document. Hence, the petitioner was seriously prejudiced and disabled from effectively defending his case. He also submits that the charges are very vague and hence the enquiry conducted with regard to the vague charges is illegal and contrary to law. Further, the learned Counsel submits that the appointing authority did not independently record the reasons and he has merely followed the ipse dixit of the disciplinary authority and, therefore, there was no proper application of mind to the enquiry conducted by the authorities. He also submits that equally the appellate authority has committed similar errors. His further submission is that the punishment is grossly disproportionate to the alleged misconduct committed by the petitioner. He finally submits that the alleged misconduct in the 2nd charge is serious and grave in nature viz., accepting bribes and resorting to illegal means. When such a serious and grave charge is not proved, the other charges were only ancillary to the main charge. Therefore, the authorities ought to have considered this aspect while imposing the punishment and on these grounds, the impugned orders are liable to be set aside as the punishment is unconscionable.

4. The learned Standing Counsel for the Bank submits that the document sought by the petitioner viz., the investigation report need not be furnished inasmuch as no prejudice is caused to the petitioner. It is not even the case of the petitioner that the authorities relied on this document for finding him guilty of the charges. In such an event, it would not be proper for the petitioner to contend that non-furnishing of the document amounted to violation of the principles of natural justice. Thus, she relied upon the judgment of this Court in WPNo.5785 of 1992 wherein similar issue was decided in favour of the bank. She also submits that the contention of the petitioner that the charges are vague is not maintainable inasmuch as the petitioner had effectively participated in the enquiry and defended his case with regard to each and every charge. Similarly, with regard to findings of the appellate authority, she submits that when the appellate authority is accepting and concurring with the findings of the disciplinary authority, normally no separate reasons are required to be recorded. It is only when disagreement is recorded, reasons are required to be given. Coming to the proportionality of the punishment, the learned Standing Counsel submits that the same cannot be said to be unconscionable as the petitioner has committed serious irregularities and each irregularity would deserve the punishment of removal and in such an event, whether the petitioner is absolved of the corruption charges or not becomes immaterial for the purpose of punishment. She, therefore, pleads that the writ petition is liable to be dismissed.

5. Before dealing with the order aspects of the case, it is necessary to consider whether there is infraction of principles of natural justice and that whether the petitioner was afforded a reasonable opportunity to defend his case.

6. The principal contention raised by Mr. Y. Venkata Sastty, the learned Counsel for the petitioner, is that the charges were based on the investigation report submitted by the Officer concerned and the disciplinary authority relied upon the said report for framing the charges against the petitioner and when the petitioner sought for such a document, the author of the report claimed privilege. Therefore, the petitioner was disabled from effectively defending his case for non-furnishing of the document. He relied on the decision of the Supreme Court in *State of UP. v. Shatrughan Lal* 1998 (5) SLR 43, wherein it was held that before a person is called upon to submit a reply to the charge-sheet, he must, on request made by him in that behalf, be supplied with the copies of the statement of witnesses recorded during the preliminary enquiry, particularly if these witnesses are proposed to be examined at the departmental trial. In that case, the copies of the documents indicated to be relied upon in charge-sheet were not supplied. Therefore, it was held that it is a case of violation of principles of natural justice and the Supreme Court has set aside the enquiry proceedings. The Supreme Court relied upon the decision reported in *Kashinath Dikshita Vs. Union of India (UOI)and Others*, .

7. But, however, the learned Standing Counsel for the Bank seriously disputes this contention and submits that identical issue came up this Court in WP No.5785 of 1992 and the contention of the employee was rejected by this Court on the ground that inasmuch as the documents were not taken into consideration by the authorities, he cannot complain that non-furnishing of documents resulted in failure of justice. I have perused the judgment rendered by me, which was rendered on the basis of the judgment of the Supreme Court in *State Bank of Patiala v. S.K. Sharma* 1996 (3) SCC 511.

8. Admittedly, in the instant case, charges were framed basing on the report of the investigation officer and when the petitioner had specifically asked for the said report, it is not furnished and yet the enquiry was proceeded with. As can be seen from the enquiry of such finding and also the evidence adduced in the enquiry, the investigation report was not relied upon, but we are not concerned with the enquiry in this regard. We are concerned with furnishing of the document along with the charge-sheet. It may not have been relied upon by the authorities for holding the petitioner guilty of the charges, but the mind of the authorities could well gauged in not supplying the document. In the counter, they have fairly come out with the reasons leading to non-furnishing of the document. In Para 10 of the counter, it is stated that the custodian of the report had claimed privilege, which reads as under:

"Further, it is submitted that the Investigation Report is a privileged document and the custodian of the report had claimed privilege. As such, it could not be made available to the petitioner. The disciplinary authority had thoroughly analysed the investigation report and only after he was satisfied that there was a prima facie case, he decided to charge-sheet the petitioner, initiating the disciplinary proceedings against him. The charge-sheet served on the petitioner

is a reflection of the lapses/irregularities which were brought out in the report of the investigation officer and as such not making available the report would not amount to denial of a reasonable opportunity to the petitioner. It is submitted that as there was apprehension of the petitioner tampering with the documents, witnesses and other evidences, he was relieved after handing over emergency charge to his successor and transferred from Payakaraopet and later on placed under suspension, after satisfying that there was a prima facie case for initiating disciplinary action against the petitioner. Hence, the claim of the petitioner that he was not given a reasonable opportunity cannot be accepted as tenable,"

Thus, it is seen that the entire basis for the charge-sheet is the investigation report conducted by an Officer and this report was asked by the petitioner for the purpose of defence assistance in his case. He was virtually unaware of the contents of the report. But, however, since the charge-sheet was based on the report submitted by the Investigation Officer, he sought for such a report and it was refused on the ground that it is a privileged document and that the custodian of the report claimed privilege. But, at the same time, it is curious to note that the disciplinary authority himself perused the report and thoroughly analysed the same and framed the charges. It is in that event, it became imperative on the part of the authorities to furnish such a document. The bank cannot claim privilege of the document and at the same time use it for its own purpose. Moreover, claiming of privilege of documents is governed by provisions of law. Unless it is established that furnishing of the document would be detrimental to the interest of the bank, it would not be appropriate for them to withhold the document on the ground that the custodian of the document claimed privilege but at the same time privilege was not claimed when it is perused by the disciplinary authority. Therefore, for the purpose of framing the charges, the document loses its privilege value, but when it is sought for by the petitioner, the document gets the colour of privilege. Under these circumstances, I am thoroughly satisfied that claiming of privilege of the document is wholly misconceived and the action of the management smacks of unreasonableness and unfairness. It may be that it is not referred to in the entire proceedings, either by the Enquiry Officer or Disciplinary Authority but it cannot be denied that the investigation report when it was made the basis of the charges did not pass through the mind of the disciplinary authority. Under these circumstances, it cannot be ruled out that investigation report sought to be shielded had influenced the authorities in deciding the fate of disciplinary proceedings. It may be the petitioner has not raised the point during the enquiry, but at the same time, he raised this before the appellate authority and the appellate authority simply rejected the same on the ground that it was not relied upon by the authorities. But the investigation report was the substantive basis of the charges as revealed by the disciplinary authority who in no uncertain term stated that the investigation report was thoroughly analysed and charges were framed. Therefore, under these circumstances, the investigation report becomes a more vital document as far as the petitioner is concerned so as to defend himself in

the enquiry. In the departmental enquiries intransparency and camouflaged actions cause more harm than intended. That is the reason why the principles of natural justice and reasonable opportunity to the charged officer play significant role-their violation vitiate the enquiry.

9. The judgment of this Court in WP No.5795 of 1992 dated 28-4-2000 relied on by the learned Standing Counsel for the bank does not help in this regard inasmuch as in the instant case, the question whether the document relied on by the disciplinary authority for the purpose of framing of charge is to be supplied or not. In the case decided by me, the contention was that the document need not be furnished since it was not relied on during the enquiry for holding the petitioner guilty of the charges. Therefore, on facts, the case is distinguishable.

10. Under the above circumstances, I am of the view that the case of the petitioner was put to serious prejudice by denying the investigation report. It is immaterial to visualise as to what would have been the situation had the document in question been furnished. Keeping the document in the files of the bank and making active use of the same to suit its requirement and at the same time feigning ignorance of the document clinchingly establish that the enquiry conducted by the Bank keeping the document away from the petitioner cannot be said to be fair and reasonable. I, therefore, hold that non-furnishing of the investigation report is fatal to the case of the bank. Accordingly, the enquiry conducted without furnishing the investigation report is illegal and violative of principles of natural justice. Consequently, the orders of the disciplinary authority and the appellate authority are liable to be set aside and I do so. In view of this finding, I need not go into the other points raised by the learned Counsel for the petitioner, which are opposed by the learned Standing Counsel for the bank.

11. In the normal course, I could have directed the management to conduct de novo enquiry after furnishing the report, but keeping in view the fact that the petitioner had sufficiently undergone mental, financial and psychological ordeals for more than seven years, I am not inclined to direct the management to go for fresh enquiry.

12. The writ petition is accordingly allowed. No costs.