
(2017) 08 BOM CK 0097
In the Bombay High Court
Case No : 2764 of 2006

Raghunath s/o Tejerao Kothalkar

APPELLANT

Vs

Maharashtra Gramin Bank, & Anr.

RESPONDENT

Date of Decision : 11-08-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Maharashtra Civil Services (Discipline and Appeal) Rules, 1979,
Rule 23(2) -

Citation : (2017) 08 BOM CK 0097

Hon'ble Judges : R.D. Dhanuka, Sunil K. Kotwal

Bench : DIVISON BENCH

Advocate : D.R. Bhadekar, M.M. Patil, V.M. Kagne

Judgement

1. Leave is granted to the petitioner to amend and to substitute the name of respondent No.1 by "Maharashtra Gramin Bank". Amendment to be carried out forthwith.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks a writ of certiorari for quashing the impugned order dated 18 October 2005 passed by the Board of Directors of respondent No.1 which was arising out of the order dated 25 May 2004 passed by the Chairman of the respondent No.1. Some of the relevant facts for the purpose of deciding this petition are as under :-

3. The petitioner was employed by the respondent Bank as Officer/Branch Manager. On 1 April 1998, the time scale of the officer was revised as pay scale of Rs.7100 - 12540. It is the case of the petitioner that in the year 2003, the petitioner was getting and drawing basic pay of Rs.13560/-.

4. On 3 June 2003, the respondent initiated departmental enquiry against the petitioner and levelled 21 charges and issued articles of charge and allegation and directed the petitioner to submit his written statement of defence. The

petitioner did not submit any written statement of the defence to the said article of charge and allegations.

5. It is the case of the respondent that the petitioner accepted all the charges levelled against him. This statement of the petitioner was recorded in the proceeding of the enquiry. The said proceeding was signed by the petitioner.

6. On 30-1-2004 the learned Enquiry Officer conducted an enquiry and submitted a report. The petitioner was thereafter granted personal hearing by the disciplinary authority in so far as quantum of punishment is concerned.

7. On 25 May 2004 the disciplinary authority passed order of reduction of 3 times in pay scale as well as reduction to lower stage of pay of Rs.7100 in the time scale of Rs.7,100 to 12,540.

8. Being aggrieved by the said order passed by the disciplinary authority and the Chairman, the petitioner invoked Regulation 47 of the Marathwada Gramin Bank Officers and Employees Service Regulations 2001 and preferred an appeal before the appellate authority.

9. The Senior Manager of the respondent Bank by a letter dated 10 November 2005 informed the petitioner that appeal was kept before the Board of Directors of the bank in the meeting held on 18 October 2005. It was alleged that, the Board had perused the contents of the appeal along with the entire enquiry proceeding/ arguments of both the parties, record and relevant papers, documents thoroughly and the Board had decided to consider the appeal and after discussion resolved to reduce the payment by bringing down the basic pay of Rs.8460/- in stead of Rs.7100/- (initial stage) in the time scale of Rs.7100 - 12540. The petitioner was informed that the revised punishment would be effective from the date of the decision of the Board i.e. 18 October 2005.

10. This communication of the respondent has been impugned by the petitioner in this petition along with the order dated 18 October 2005 referred in the said communication dated 10 November 2005.

11. The learned counsel for the petitioner invited out attention to the communication dated 10 November 2005 and submits that the respondent has failed to give personal hearing to the petitioner. He submits that the purported decision dated 18 October 2005 of the Board of Directors referred in the communication dated 10 November 2005 is also not furnished to the petitioner. He invited our attention to the Regulation 47 of the Marathwada Gramin Bank Officers and Employees Service Regulations 2001 (hereinafter referred to as "the Regulations, 2001") and submits that since the petitioner was not given personal hearing by the appellate authority and was not even communicated with the impugned order dated 18 October 2005, the impugned order deserves to be set aside being in violation of the principles of natural justice and being arbitrary.

12. The learned counsel for the petitioner submits that though the petitioner has admitted the allegations made in the articles of charge and allegations, the

petitioner was entitled to be heard by the appellate authority in so far as quantification of the punishment is concerned. The learned counsel for the petitioner invited our attention to the contentions raised in the affidavit in reply filed by the respondent bank that there was no procedure prescribed for personal hearing before the appellate authority and in case it is requested by a delinquent employee, the appellate authority in its discretion may grant such personal hearing depending upon the nature of individual case. In so far as supplying of the order alleged to have been passed by the appellate authority under Regulation 47 is concerned, it is contended by the respondent in the affidavit in reply that there is no procedure prescribed for supply of the decision of the appellate authority to a delinquent employee. He submits that the stand adopted by the respondent in the affidavit in reply of not granting personal hearing and of not supplying copy of the decision is illegal and is in gross violation of principles of natural justice.

13. The learned counsel for the petitioner placed reliance on the judgment of the Full Bench of this Court in the case of Anil Amrut Atre v. District and Sessions Judge, Aurangabad, reported as 2002 (3) Mh.L.J. 750 and in particular on paragraphs 23, 26 and 31. He submits that Rule 23(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules 1979 which is in pari materia with Regulation 47 of the Regulations 2001 has been considered by the Full Bench of this Court and has held that the expression "consider" will include within its sweep application of mind, personal hearing and recording of reasons. He submits that the appellate authority was not only bound to render hearing to the petitioner but was also bound to provide reasoned order to the petitioner.

14. Learned counsel for the respondent, on the other hand, submits that the petitioner had admitted all the charges levelled against him by the respondent before the learned Enquiry Officer. The learned Enquiry Officer recorded the admission on the part the petitioner in respect of the charges in the proceeding before him. He submits that in so far as the submission of the learned counsel for the petitioner that no personal hearing was given by the appellate authority or that copy of the impugned decision taken by the appellate authority under Regulation 47 not having been furnished to the petitioner and thus the same is in violation of principles of natural justice is concerned, it is submitted by the learned counsel for the bank that Regulation 47 neither contemplates any personal hearing nor supply of the order passed by the appellate authority. He, however, submits that in any case the petitioner never applied for giving personal hearing before the appellate authority.

15. Regulation 47(2) provides that the appellate authority was to consider the appeal and pass suitable order preferably within the period of six months. A perusal of the communication dated 10 November 2005 from the Senior Manager of the respondent to the petitioner indicates that the petitioner was only informed about the decision purported to have been taken by the Board of Directors in the meeting held on 18 October 2005. By the said letter, the

petitioner was conveyed that the Board had perused the contents of appeal along with entire enquiry proceedings/arguments of both the parties, record and other relevant papers/documents thoroughly. The petitioner was informed that the Board had decided to consider the appeal and after discussions resolved to reduce the punishment by bringing down the basic pay to Rs.8460/- in stead of Rs.7100 (initial stage) in the time scale of Rs.7100/- to Rs.12540/- effective from 18-10-2005.

16. In our view, the appellate authority was bound to pass a reasoned order after giving an opportunity of being heard to the petitioner and ought to have supplied the decision to the petitioner who was a party to the appeal provided under Regulation 47 of the Regulations, 2001. Both these requirements are mandatory and are in consonance with the principles of natural justice. In our view any order passed by any authority which may have civil consequences and affects the rights of a person can be passed only after complying with the principles of natural justice i.e. after giving personal hearing to a party who is likely to be affected by the adverse order if any, followed by reasoned order and supplying the impugned order to such party. Regulation 47 does not provide that personal hearing would be rendered only if it is demanded by the delinquent employee.

17. This Court in the case of Anil Amrut Atre (supra) has considered similar provision i.e. Rule 23(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules 1979 and also the similar provision in the Railway Servants (Discipline and Appeal) Rules, 1968 and has held that the expression "consider" in rule 23(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules 1979 will include within its sweep application of mind, personal hearing and recording of reasons. It is held that it is mandatory on the part of the appellate authority to apply its mind and to pass speaking order after affording personal hearing to the delinquent.

18. Regulation 47 is extracted as under :-

"47. Right to appeal.

(i) An officer or employee shall have right of appeal against any order passed under these Regulations which injuriously affects his interest.

(ii) The appeal shall be preferred to the Appellate Authority mentioned in Regulation 48 within 45 days of the date of the receipt of the order appealed against. The Appellate Authority shall consider the appeal and pass suitable order preferably within a period of 6 months."

19. In our view, the expression "consider" in a provision for appeal or providing any other legal remedy to a party cannot be an empty formality. Since the rights of an officer or an employee may be seriously prejudiced by any adverse order that is passed by the appellate authority, by exercising power under Regulation 47, such powers will have to be exercised in accordance with law and after following principles of natural justice. In our view the principles laid down by the

Full Bench of this Court in the case of Anil Amrut Atre (cited supra) squarely apply to the facts of this case. We are respectfully bound by the said judgment. Petitioner has demonstrated that a prejudice is caused to him due to deprivation of personal hearing and by not furnishing the impugned order passed by the appellate authority.

20. In our view communication of the order purportedly to have been passed by the Board of Directors of the respondent in its meeting dated 18 October 2005 is not sufficient. Unless the petitioner would have been supplied with the reasoned order as would have been passed by the appellate authority, the petitioner could not have challenged the said order on its merits. Such order which is stated to be adverse to the interest of the petitioner cannot be suppressed from the petitioner who was appellant before the appellate authority. In our view the appellate authority is under obligation to furnish the order passed by it to the petitioner disclosing as to how the appellate authority had granted only part relief to the petitioner and on what basis the other reliefs are rejected. The impugned order dated 10 November 2005 granting approval to the order dated 18 October 2005 thus deserves to be set aside being in violation of principles of natural justice and being arbitrary.

21. A perusal of the impugned letter dated 10th November 2005 indicates that the Board has alleged to have considered the arguments of both the parties though the petitioner was not granted any opportunity of being heard. It also refers to the discussions alleged to have been held by the Board without disclosing about such discussions with whom. In our view the impugned order thus shows non application of mind and perversity and thus deserves to be set aside on this ground also.

22. We therefore, pass the following order :- (a) The impugned communication dated 10 November 2005 and the impugned decision recorded in the said letter dated 18 October 2005 annexed at Exhibit 7 is quashed and set aside.

(b) The appeal dated 4 October 2005 filed by the petitioner before the appellate authority under Regulation 47 of the Marathwada Gramin Bank Officers and Employees Service Regulations, 2001 is restored to the file. The appellate authority shall grant an opportunity to the petitioner of being heard and shall pass a reasoned order after considering the material on record and oral & written submissions, if any, made by the petitioner and shall pass a fresh order in accordance with law.

(c) It is made clear that this Court has not expressed any views on the merit of the matter including quantum of punishment inflicted by the appellate authority in the impugned order.

(d) It is also made clear that the appellate authority shall decide the matter afresh without being influenced by the decision purported to have been taken in the meeting held on 18 October 2005 and in the communication dated 10 November 2005 sent to the petitioner. The appellate authority shall pass fresh

order within 3 months from the the date of receipt of authenticated copy of this order.

(e) The appellate authority shall furnish a copy of the reasoned order to the petitioner within 3 weeks from the date of passing of such order. The petitioner is directed to inform his present address to the appellate authority for the purpose of communication and for compliance of this order within two weeks from today.

(f) Rule is made absolute in the aforesaid terms. There shall be no order as to cost. The parties and the appellate authority to act on the authenticated copy of this order.