
(2008) 12 AP CK 0025

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 617 of 2008

State bank of India and Others

APPELLANT

Vs

B.V. Bhaskar Reddy

RESPONDENT

Date of Decision : 17-12-2008

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2009) 3 ALD 596 : (2009) 1 ALT 610

Hon'ble Judges : Anil R. Dave, C.J

Bench : Single Bench

Advocate : E. Madan Mohan Rao, for the Appellant; T. Ravikaran Rao, for the Respondent

Judgement

Anil R. Dave, C.J.—This appeal is directed against the order dated 02.4.2008 passed in Writ Petition No. 460 of 2006, whereby the learned Single Judge has allowed the writ petition filed by the respondent - original petitioner, setting aside the orders dated 29.7.2004 and 20.10.2005 passed by appellants No. 3 and 2 herein respectively and has remanded the matter to appellant No. 3 for fresh consideration and disposal in accordance with law. The learned Single Judge has also directed that the original petitioner should be reinstated into service forthwith with all benefits up to date.

2. The brief facts of the case are that the respondent herein was appointed as a Senior Assistant in State Bank of India. While he was working at Proddatur Branch of the bank, a departmental enquiry had been initiated against him on the ground that he had committed several irregularities. The enquiry officer submitted his report on 21.4.2004 with a finding that all the charges, except one, levelled against the respondent, were proved. The disciplinary authority i.e. appellant No. 3 herein was of the view that charge C 2 (i), which was held to be not proved by the enquiry officer, was also proved and he proposed the punishment of dismissal of the respondent from service. Thereafter, the respondent was given an opportunity of personal hearing by the disciplinary

authority (appellant No. 3 herein) with regard to the nature and quantum of punishment on 5.7.2004. After hearing the respondent, the disciplinary authority confirmed the proposed punishment of dismissal from service and passed a final order dated 29.7.2004. Aggrieved by the same, the respondent preferred an appeal before the Deputy General Manager and Appellate Authority (appellant No. 2). The appellate authority, though agreed with the findings of the disciplinary authority, considered the long service rendered by the respondent and reduced the punishment of dismissal to that of removal from service by an order dated 12/20.10.2005. The orders of the disciplinary authority and appellate authority had been challenged in the writ petition.

3. The learned Single Judge observed that though the disciplinary authority disagreed with the finding of the enquiry officer in respect of Charge C 2 (i), he did not give an opportunity to the original petitioner (the respondent herein) to defend his case. The learned Single Judge further observed that the disciplinary authority did not furnish any reason in support of his conclusions and that the order of dismissal was very brief. Holding so, relying upon the judgment of the Hon"ble Supreme Court delivered in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, , the learned Single Judge allowed the writ petition filed by the respondent herein and remanded the matter to appellant No. 3 for fresh consideration after giving a fresh show cause notice.

4. In this appeal, the learned Counsel for the appellants has submitted that the respondent had not placed any material before the learned Single Judge to show that any prejudice was caused to the respondent while differing from the finding of the enquiry officer on Charge C 2 (i). It has been submitted by the learned Counsel that the order of the disciplinary authority could not have been interfered with by the learned Single Judge as the ultimate decision arrived at by the disciplinary authority was based on relevant and existing grounds. The learned Counsel has submitted that in each and every case where one of the principles of natural justice has been violated, it would not make the order void. According to him, looking to the facts of the case, violation of the principles of natural justice, if any, would not vitiate validity of the order as no prejudice was caused to the respondent delinquent and, therefore, the learned Single Judge ought not to have quashed and set aside the order of removal, which is otherwise just and legal.

5. The learned Counsel has taken us through the charges levelled against the respondent employee. He has drawn our attention to the fact that the respondent employee was a bank officer dealing with money and looking to the charges proved against him, his integrity was doubtful and such a person could not have been continued in service even for a day. He has, therefore, submitted that the order passed by the learned Single Judge is not in consonance with the law laid down by the Hon"ble Supreme Court and more particularly in the case of P.D. Agarwal v. State Bank of India (2006) 8 SCC 776 wherein it has been held that the principles of natural justice cannot be put in a straight jacket formula

and looking to the facts of the case, and more particularly when no prejudice had been caused to the respondent employee, the order passed by the learned appellate authority should not have been quashed.

6. On the other hand, the learned Counsel appearing for the respondent employee has supported the order passed by the learned Single Judge by submitting that the disciplinary authority ought to have given notice to the respondent employee because it had not agreed with the enquiry officer in respect of one of the very serious charges. The charge which was not held to be proved by the enquiry officer was held to be proved by the disciplinary authority. In such an event, the respondent employee ought to have been given intimation about the reasons for which a different view was taken by the disciplinary authority so as to enable the respondent to justify that the view of the inquiry officer was correct.

7. Moreover, he has submitted that the order passed by the disciplinary authority is not a reasoned order. According to him, the learned Single Judge has rightly come to the conclusion that the order was not a speaking order and, therefore, the order of removal is unjust. He has, therefore, submitted that the appeal be dismissed.

8. We have heard the learned Counsel and have gone through the relevant record including the charge sheet filed against the respondent employee. Upon perusal of the charge sheet, we also agree that the charges are very serious and of grave nature. Charge C (2)(i), which was found to be not proved by the enquiry officer but which was found to be proved by the disciplinary authority is as under:

Charge C 2 (i):

(2) Current (OD) A/c. No. 1090094030:

i) On many a occasion, cheques were drawn in excess of the limit/drawing power available in the account. A few such instances are as under:

Date	Amount	Rs. Balance (Dr.)	Rs. Limit	Rs. Adjusted	on
29.11.1999	2,500/-				
84,628.00	82,500/-	01.12.1999	13.01.2000	95,000/-	82,813.93
82,500/-		20.01.2000	07.02.2000	10,000/-	82,813.93
82,500/-		11.02.2000	16.02.2000	50,000/-	99,313.93
82,500/-		27.03.2000	13.05.2000	12,000/-	92,865.38
82,500/-		18.05.2000	27.06.2000	7,001/-	89,493.40
82,500/-		08.07.2000	06.10.2000	6,750/-	1,14,010.60
1,14,010.60	1,08,000/-	23.11.2000	29.12.2000	50,000/-	1,09,036.16
1,09,036.16	1,08,000	17.01.2001	16.03.2001	20,000/-	1,20,296.73
1,20,296.73	1,08,000/-	16.03.2001			

9. The above stated charge is quite serious. In view of the findings of the enquiry officer, the aforesaid charge had not been proved whereas the disciplinary authority came to the conclusion that the afore-stated charge had also been proved. Ultimately, after hearing the respondent and considering his reply on the quantum of punishment, the respondent was dismissed from service by an order

dated 29.7.2004.

10. Being aggrieved by the order of dismissal, the respondent employee had filed an appeal. After considering the submissions made by the respondent and looking to the fact that the respondent had put in a very long service, the disciplinary authority had taken sympathetic view and had reduced the punishment by inflicting punishment of removal instead of his dismissal from service.

11. The question, which requires to be considered in this case, is whether it was necessary, in the interest of justice, to give reasons as to why the disciplinary authority did not agree with the conclusion of the enquiry officer in respect of the afore-stated charge, namely, charge No. C 2 (i) and whether it was necessary to hear the respondent on the said subject.

12. It is a settled legal position that when the disciplinary authority is not the enquiring authority, a copy of the report of the enquiring authority alongwith its own tentative reasons for disagreement, if any, with the findings of the enquiring authority on articles of charge should be forwarded to the concerned delinquent and the delinquent should be given a chance to submit his written submissions to the disciplinary authority. The said principle has not been followed in the instant case.

13. The disciplinary authority has to consider the representation, if any, submitted by the delinquent and record its findings before proceeding further in the matter. The disciplinary authority has to record its findings and has to give an opportunity of hearing to the delinquent before passing a final order against him/her.

14. In *Punjab National Bank v. Kunj Behari Misra* (supra), the Hon"ble Supreme Court relied on the judgment *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, and in paragraph 18 of the judgment observed as follows:

18. ... When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by it. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why any opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officer succeed before the enquiry officer, he is deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In any such situation, the charged officer must have an opportunity to represent to the disciplinary authority before final findings of the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of

enquiry as explained in Karunakar case.

15. The Hon"ble Supreme Court proceeded further to observe that if the disciplinary authority disagrees with the findings of the enquiry officer on any article of charge, then it must, before recording its findings on such charge, record its tentative reasons for such disagreement and give opportunity to the delinquent officer to represent before it. The above observations which are in paragraph 19, read as under:

19. ... Whenever the disciplinary authority disagrees with the enquiring authority on any article of charge, then before it records its findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

16. The law laid down in Punjab National Bank v. Kunj Behari Mishra (supra) was applied by the Hon"ble Supreme Court in Yoginath D. Bagde Vs. State of Maharashtra and Another, . In the said judgment, the Hon"ble Supreme Court went to the extent of holding that the opportunity of hearing may either be provided specifically by rules made under Article 309 of the Constitution or the disciplinary authority may, of its own, provide such an opportunity. The observations made in paragraph 28 of the judgment are as follows:

28. Opportunity of hearing may either be provided specifically by rules made under Article 309 of the Constitution or the disciplinary authority may, of its own, provide such an opportunity. Where rules are silent on this aspect and disciplinary authority also does not give an opportunity of hearing to the delinquent officer and records findings different from those of the Inquiring Authority that the charges were established, "an opportunity of hearing" may have to be read into the rule by which the procedure for dealing with the Inquiring Authority's report is provided, principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be "not guilty" by the Inquiring Authority, is found "guilty" without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of "not guilty" has already been recorded.

17. The Hon"ble Supreme Court further observed that "right to be heard" being a constitutional right of the employee, cannot be taken away by any legislative enactment or service rule including the rules made under Article 309 of the Constitution.

18. In SBI v. Arvind K. Shukla (2004) 13 SCC 797, the Hon"ble Supreme Court

held that a disciplinary authority disagreeing with the findings of the enquiry officer was required to record its tentative reasons for disagreement and give the same to the delinquent officer to give an opportunity to represent before it, before recording its ultimate findings.

19. In *Lav Nigam v. Chairman & MD, ITI Ltd.* (2006) 9 SCC 440, the findings recorded by the enquiry officer in the enquiry report were favourable to the charged employee. However, disciplinary authority took a view different to the one taken by enquiry officer. The Hon''ble Supreme Court in such a fact situation observed that the procedure to be followed by the disciplinary authority would be to give an opportunity of hearing to the charged employee. The Hon''ble Supreme Court held that the disciplinary authority is bound to give a notice setting out its tentative conclusions to the charged employee. It is only after hearing the said employee that the disciplinary authority can arrive at a final finding of guilt. Thereafter, the employee would again have to be served with a notice relating to the punishment proposed.

20. Thus, on a careful reading of the above judgments of the Hon''ble Supreme Court, the following propositions would emerge:

- 1) When the Inquiry Officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the inquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee on the charges leveled against him. That right is a part of the employee's right to defend himself against the charges leveled against him.
- 2) Non-supply of the Inquiry Officer's report before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee to prove his innocence and it is a breach of the principles of natural justice.
- 3) If the disciplinary authority disagrees with the findings of the enquiry officer on any article of charge, then it must, before recording its findings on such a charge, record its tentative reasons for such disagreement and give opportunity to the delinquent employee to represent before it.
- 4) Even if the opportunity of hearing was not specifically provided by rules made under Article 309 of the Constitution, the disciplinary authority should, of its own, provide such an opportunity.
- 5) The disciplinary authority can, after hearing the delinquent employee on such findings of the enquiry officer or the disagreement recorded by it on all or some of the charges levelled against the delinquent employee, arrive at a final finding of guilt.
- 6) Thereafter, the employee should be served with a notice relating to the punishment proposed.

21. In the instant case, upon perusal of the charge sheet, though we find that all the charges are very serious, however, during the course of enquiry, no adverse finding was recorded against the employee by the enquiry officer with reference to the charge covered under C (2)(i). The said charge, which was not found to be proved by the enquiry officer, was also found to be proved by the disciplinary authority. The punishment proposed by the enquiry officer was dismissal from service. The said decision to impose the penalty of dismissal was arrived by the disciplinary authority taking into account the conclusion he has drawn with reference to charge No. C (2)(i) also.

22. But, at the same time, it is not in dispute that the disciplinary authority has not given any opportunity before coming to the conclusion on the charge covered by C (2)(i) contrary to the findings recorded by the enquiry officer. In our view, by not providing opportunity before coming to the conclusion on the said charge contrary to the findings recorded by the enquiry officer, the disciplinary authority committed a mistake by not giving any notice or by not intimating the fact that it did not agree with the findings of the enquiry officer in relation to charge No. C (2)(i). The respondent employee was not aware of the fact that the disciplinary authority had taken a different view in respect of Charge No. C 2 (i). Had he been informed by the disciplinary authority that it had not agreed with the views expressed by the enquiry officer, the respondent could have given reasons supporting the view expressed by the enquiry officer. Instead, the disciplinary authority passed an order of dismissal and for the first time when the order of dismissal was communicated, the respondent employee came to know that the disciplinary authority had not agreed with the view expressed by the enquiry officer and thus he did not get a chance to convince the disciplinary authority to the effect that the conclusion reached by the enquiry officer was correct in respect of one of the charges.

23. In our opinion, the above referred fact had been rightly considered by the learned Single Judge. The learned Single Judge has remanded the matter so that a fresh decision can be taken after hearing the respondent employee. In that event, the respondent employee will get an opportunity to substantiate his case before the disciplinary authority and only after making an effort, the disciplinary authority would initiate the proceedings.

24. The learned advocate appearing for the appellants have relied upon the judgment delivered in the case of P.D. Agarwal v. State Bank of India (supra).

25. It is true that the principles of natural justice cannot be put in a straight jacket formula and if no prejudice is caused to anyone by not following the principles of natural justice very scrupulously, the order violative of the principles of natural justice need not become void in all cases. It is not so in the instant case. In the instant case, as stated hereinabove, the respondent employee did not get a chance to convince the disciplinary authority to the effect that the finding arrived by it in respect of Charge No. C 2 (i) is not a trivial one and it is a very serious charge. Had it been a trivial charge, possibly we could have said

that there was no serious violation of the principles of natural justice. However, in view of the seriousness of the charge on C (2) (i), the submission of the learned Counsel for the appellant bank that no prejudice was caused to the employee in spite of not giving notice by the disciplinary authority before coming to a different conclusion than the one arrived at by the enquiry officer cannot be accepted. For the afore- stated reason, we are in agreement with the view expressed by the learned Single Judge.

26. For the reasons stated hereinabove, we are in agreement with the views expressed by the learned Single Judge. However, we modify the order with regard to payment of back wages for the reason that at this juncture the enquiry proceedings are not over and, therefore, in view of the law laid down by the Hon"ble Supreme Court in the case of Ranjit Singh Vs. Union of India (UOI) and Others, , back wages need not be paid to the respondent employee. The question with regard to payment of back wages or otherwise would arise only at the end of the enquiry proceedings.

27. Subject to the above modification, the appeal is disposed of with no order as to costs.