

(2007) 01 MAD CK 0184

In the Madras High Court

Case No : W.A. No. 329 of 2001 and W.A. M.P. No. 2314 of 2004

The General Manager, Canara Bank and The Executive
Engineer, Canara Bank

APPELLANT

Vs

L.M.V. Devakumar, Senior Manager, Canara Bank, District
Coordinator

RESPONDENT

Date of Decision : 12-01-2007

Acts Referred:

Canara Bank Officer Employees (Discipline and Appeal) Regulations, 1976 —
Regulation 12(1), 24, 7(2)
Constitution of India, 1950 — Article 309, 311(2)

Citation : (2007) 01 MAD CK 0184

Hon'ble Judges : S.K. Krishnan, J;Dharma Rao Elipe, J

Bench : Division Bench

Advocate : C. Seethapathy, for the Appellant; S. Balasubramaniam, for the
Respondent

Final Decision : Dismissed

Judgement

Dharma Rao Elipe, J.—Challenge is to the order dated 20-12-2000 passed by the learned single Judge in W.P. No. 754 of 1992, allowing the writ petition filed by the respondent herein.

2 The respondent herein had filed the above said writ petition seeking a Writ of Certiorarified Mandamus, calling for the records of the General Manager, Canara Bank (Head Office) Bangalore, first appellant herein, in his proceedings No. IRS:DP:MC:CHF:262.91 dated 19-8-1991 sent through the proceedings MC.DAC 1074 E.37 Disciplinary Action Cell, Circle Office, Canara Bank,. Madras dated 10-9-1991 and quash the same and direct the appellants to restore him in the original place of seniority and to pay him the arrears of pay and other consequential benefits from the date of his suspension.

3. The respondent, who at the relevant time was working as the Senior Manager in the appellant bank, was suspended from service under Regulation 12(1)(a) of

the Canara Bank Officer Employees (Discipline) and Appeal Regulations, 1976 on 1-9-1986 and that four charges were framed against him for non-performance of his duties and misconduct in terms of Regulation 24 of Canara Bank Officer Employees" (Conduct) Regulations, 1976. Enquiry proceedings were initiated against the respondent in which the enquiry officer held that out of four charges framed against the respondent, charge No. 1 was proved, that Charge No. 2 was proved to the extent that Charge No. 1 contributed to it and Charge Nos. 3 and 4 were partly proved. The Disciplinary authority, however, disagreeing with the findings of the enquiry officer held that Charge Nos. 2 and 4 were fully proved and imposed the punishment of reduction to lower grade, i.e. from Scale III to Scale II, which is a major punishment. The appeal and the further review petition preferred by the respondent against the punishment were rejected by the authorities concerned. Challenging the same, the respondent herein had filed the writ petition mainly contending that no opportunity was given to him by the disciplinary authority, before disagreeing with the findings of the enquiry officer and therefore the punishment of reduction to lower grade is vitiated.

4. Learned single Judge quashed the impugned order and allowed the writ petition on the ground that no opportunity was given to the petitioner before the disciplinary authority disagreeing with the findings of the enquiry officer, but liberty was given to the bank to proceed afresh after affording an opportunity of hearing to the petitioner on the charges the bank disagreed with the findings of the enquiry officer Aggrieved, the bank has filed the writ appeal.

5. Learned Counsel appealing for the appellant Bank submitted that there was no denial of natural justice to the respondent in the imposition of punishment by the disciplinary authority, As per Regulation 7(2) of the Canara Bank Officer Employees (Discipline and Appeal) Regulations, 1976 the disciplinary, for the reasons to be recorded, may disagree with the findings of the enquiry officer and in the present case the said regulation has been, strictly complied with. The disciplinary authority, under the Regulations, is vested with the discretion to disagree with the findings recorded by the enquiry officer. The respondent had been put on notice of the fact that the disciplinary authority had disagreed with some of the findings recorded by the enquiry officer and at that stage there was no proposal to impose any punishment on the respondent and that sufficient opportunity had been given to the respondent to defend himself. The decision in *Yoginath D. Bagde Vs. State of Maharashtra and Another*, which was relied on by the learned single Judge for allowing the writ petition is not applicable to the facts and circumstances of the present case. In that case, the disciplinary authority had imposed a punishment of dismissal from service after giving opportunity to the delinquent to show cause only against the proposed punishment of dismissal. The disciplinary authority had considered the submissions of the respondent on the question of disagreement with the findings of the enquiry officer before imposing the punishment. In support of the above contentions, learned Counsel relied on the decision reported in 2006 (4) CTC 677 (*G. Viswanathan and Anr. v. The Reviewing Committee, State Bank of India*,

Central Office).

6. On the other hand, learned Counsel appearing for the respondent submitted that it is mandatory on the part of the disciplinary authority to afford an opportunity of hearing to the respondent before disagreeing with the findings recorded by the enquiry officer and before coming to the conclusion that the charges levelled against the respondent were proved fully. If no such opportunity was granted to the delinquent, the findings of the disciplinary authority is vitiated and the punishment is liable to be set aside. Learned Counsel submitted that the learned single Judge was correct in quashing the impugned order on the ground that no opportunity was given to the respondent before the disciplinary authority disagreeing with the findings of the enquiry officer. In support of his contention, learned Counsel relied on Yoginath Bagde case, cited supra.

7. The short point for consideration is whether the learned single Judge was right in quashing the impugned order and allowing the writ petition on the ground that no opportunity was given to the respondent before the disciplinary authority disagreeing with the findings of the enquiry officer and imposing the punishment of reduction in rank.

8. It is evident from the material placed on record that by the proceedings dated 24-11-1990, the disciplinary authority while agreeing with the findings of the enquiry officer in respect of Charge Nos. 1 and 3, but disagreed with the findings of the enquiry officer in respect of Charge Nos. 2 and 4. The disciplinary authority held that the evidence already taken on record during enquiry was sufficient to hold the respondent delinquent fully guilty Charge Nos. 2 and 4 also. After recording the above finding, the disciplinary authority, by communication dated 27-11-1990 informed the respondent that he has disagreed with the findings of the enquiry officer to a certain extent and called upon the respondent-delinquent to make any representation or submissions, if any, on the findings within fifteen days of receipt of the communication, failing which appropriate orders would be passed by the disciplinary authority. The copies of the report of the enquiry officer and the findings of the disciplinary authority were furnished to the respondent along with the communication dated 27-11-1990. The respondent-delinquent submitted his representation by his letter dated 17-12-1990. The disciplinary authority, after considering the submissions of the respondent, imposed the punishment of reduction to a lower grade, i.e. from Scale III to Scale II, which deprived the respondent-delinquent his promotional chances for a period of three years from the date of imposition of punishment. The action of the disciplinary authority without giving an opportunity of hearing to the respondent-delinquent at the stage at which the disciplinary authority proposed to differ with the findings of the enquiry officer, in our considered view, is ex facie illegal and sufficient to vitiate the findings recorded by the disciplinary authority contrary to the findings of the enquiry officer.

9. Under Regulation 7(2) of the Canara Bank Officer Employees (Discipline and Appeal) Regulations, 1976, the disciplinary authority, if it disagrees with the

findings of the enquiry officer on any article of charge, shall record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose. It is in exercise of the powers under Regulation 7(2), the disciplinary authority has disagreed with the findings of the enquiry officer, and recorded its own findings in respect of Charge Nos. 2 and 4. The contention raised on behalf of the respondent-delinquent was that, the findings recorded by the disciplinary authority were vitiated since no opportunity of hearing was given to the respondent by the disciplinary authority before it proposes to disagree with the findings recorded by the enquiry officer.

10. Regulation 7(2) does not specifically state that when the disciplinary authority disagrees with the findings of the enquiry officer and proposes to come to a different conclusion, opportunity of hearing should be granted to the delinquent employee. A similar question came up for consideration before the Supreme Court in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, and a 3-Judge Bench of the Supreme Court, after referring to earlier decisions, held as follows:

Where the disciplinary authority differs with the view of the Inquiry Officer and proposes to come to a different conclusion there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the Inquiry Officer, they were deprived of representing to the disciplinary authority before that authority differs with the Inquiry Officer's report and while recording a finding of guilt, imposes punishment on the officer. In any such situation, the charged officers must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed.

The Supreme Court further held:

The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2) As a result thereof whenever the disciplinary authority disagrees with the Inquiry Authority on any article of charge then before it records its own 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 Inquiry 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 Inquiry 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 with misconduct to file a representation before the Disciplinary Authority records its findings on the charges framed against the officer.

11. The above said decision was followed by the Supreme Court in Yoginath D. Bagde Vs. State of Maharashtra and Another, , wherein, the Supreme Court held as follows:

Where the Rules are in this regard silent, and the 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 (Para 28)

The Rule does not specifically provide that before recording its own findings, the Disciplinary Authority will give an opportunity of hearing to a delinquent officer. But the requirement of "hearing" in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before Disciplinary Authority finally disagrees with the findings of the Inquiring Authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the Inquiry Authority do not suffer from any error and that there was no occasion to take a different view. The Disciplinary Authority, at the same time, has to communicate to the delinquent officer the "TENTATIVE" reasons for disagreeing with the findings of the Inquiring Authority so that the delinquent officer may further indicate that the reasons on the basis on which the Disciplinary Authority proposes to disagree with the findings recorded by the Inquiring Authority are not germane and the finding of "not guilty" already recorded by the Inquiring Authority was not liable to be interfered with. (Para 29)

In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The

enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away in any legislative enactment or service Rules including Rules made under Article 309 of the Constitution. (Para 32)

12. On the basis of the above said rulings of the Supreme Court and the materials placed on record before us, it is evidently clear that no opportunity of hearing was given to the respondent before the disciplinary authority recording its findings disagreeing with the findings of the enquiry officer. When the disciplinary authority proposed to disagree with the findings of the enquiry officer on Charge Nos. 2 and 4 which were favourable to the delinquent-respondent then before the disciplinary authority records its own findings on such charge, it should have recorded its tentative reasons for such disagreement and should have given the delinquent-respondent an opportunity of being heard before it records its findings. This was not done in the present case. The principles of natural justice require the disciplinary authority which has to take a final decision and can impose a penalty, to give an opportunity to the delinquent to file a representation before the disciplinary authority records its findings on the charges framed against the delinquent.

13. Learned Counsel for the appellants very heavily relied on the Division Bench judgment of this Court, to which one of us (Dharma Rao Elipeti, J.) was a party, in *G. Viswanathan v. The Reviewing Committee, State Bank of India* 2006 4 CTC 677. We have carefully gone through to the said decision. The said decision has no application to the present case. In the said case, though the disciplinary authority has not given the opportunity to the delinquent, the review authority has given the opportunity. In such circumstances, the Division Bench held that no prejudice is caused to the appellants. Therefore, this judgment is not helpful to the appellants.

14. For the reasons stated above, the learned single Judge was right in quashing the impugned order on the ground that no opportunity was given to the respondent before the disciplinary authority disagreeing with the findings of the enquiry officer. The appeal, which has no merits, is dismissed. No costs. Connected miscellaneous petition is closed.