(2006) 09 KAR CK 0040

In the Karnataka High Court

Case No : Writ Petition No. 36521 of 2000

V.V. Kamath APPELLANT

Vs

Assistant General Manager, Bank of Baroda and Others RESPONDENT

Date of Decision : 22-09-2006

Acts Referred:

Citation : (2006) 6 KarLJ 696 : (2007) 1 LLJ 954

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : M.S. Nagaraj, for M.S. Nagaraj Associates, for the Appellant; B.S. Shankarnarayan, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—The facts of the case are:

The petitioner was appointed as a clerk with the respondent bank on 10.4.1964 and was confirmed on 9.3.1965. It is the petitioner''s case that he has rendered 35 years of service with the respondent Bank and he was a Senior Manager in the year 1991 and that he has to his credit, a blemishless service, as evidenced by the respondent bank itself conferring several awards for his performance.

2. By a letter dated 24.4.1995, the petitioner was called upon by the General Manager, South Zone, to submit his explanation in respect of certain irregularities in advances at Panambur. The petitioner, accordingly, had furnished his explanation clarifying the position and refuting the several allegations against him. However, the respondent bank had proceeded to issue a charge sheet, fourteen months thereafter, consisting of eight charges, dated 22.11.1996. The petitioner had submitted his statement of defence. An enquiry was conducted and an enquiry report was submitted on 7.10.1998 where the charges were held proved. The Disciplinary Authority, issued an order of punishment imposing compulsory retirement. The petitioner had challenged the same by way of an appeal. The appeal having been dismissed on merits, the petitioner is before this

Court.

3. The counsel for the petitioner would submit, that the action of the respondents is illegal and unjust. The charges were general and ambiguous and are without reference to the Bank of Baroda Officer Employees (Conduct) Rules, 1976 (hereinafter referred to as ''the Rules'' for brevity). In this light of the matter, the petitioner was not provided an opportunity to plead his defence effectively. The Articles of Charge were not accompanied by a list of documents, which also hampered the petitioner in defending his case. He would submit that during the course of enquiry, only a few documents were produced by the Presenting Officer and in respect of other documents, they were claimed to be privileged documents and the petitioner was therefore disabled from controverting their contents. Further, non-supply of additional documents also caused injury and prejudice to the defence of the case. These infirmities were in direct violation of the regulations governing the bank and its employees. The findings therefore, are not based on evidence on record, but proceeded on assumptions and presumptions. As no witnesses were examined, the documents produced by the Presiding Officer would have no evidentiary value and it would not support the case of the respondents. The Appellate Authority has equally railed to consider the merits of the case and has mechanically proceeded to dismiss the appeal of the petitioner. Therefore, the ingredients necessary for interference by this Court in its writ jurisdiction are glaringly present and that the petition will have to be allowed.

4. The counsel for the petitioner has relied on a large number of cases as follows:

a) G.V. Aswathanarayana Vs. Central Bank of India and Others, : Wherein this Court has laid down that the delinquent must be informed clearly, precisely and accurately of the charges levelled against him and the object of this requirement is that the delinquent employee must know what he is charged with and have adequate opportunity to meet the charge and to defend himself by giving a proper explanation. If such an opportunity is not granted, it will amount to the delinquent being condemned, unheard.

b) State of Punjab and Others Vs. Ram Singh Ex. Constable, : Wherein the Supreme Court has defined the word ''misconduct''.

c) S.G. Nayak and Another Vs. Canara Bank and Another, Wherein, this Court, while dealing with the contention as to denial of certain documents, has held that where the delinquents had sought for documents at the earliest point of time and have made known the relevancy of the same even before summoning them. This Court held that the custodian of those documents cannot decide the relevancy of those documents and that it was not for the bank to decide the relevancy of the documents and production of documents should be the rule.

d) Kuldeep Singh v. Commissioner of Police and Ors. 1999 SCC (L & S) 429 : in support of the contention that in cases where the findings arrived are not based on evidence, interference in judicial review is warranted.

e) Sher Bahadur v. Union of India and Ors. 2002 SCC (L& S) 1028 : For the proposition that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged again him. Evidence which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law.

f) State of U.P. Vs. Ravinder Nath Chaturvedi and Another, : When no prosecution witnesses were examined and not affording a reasonable opportunity to cross-examine the witnesses, the High Court has proceeded to set aside the imposition of penalty. The Supreme Court has however quashed the order and directed that the domestic enquiry be conducted after examining the concerned officer and providing liberty to the petitioner to cross-examine the witnesses.

g) Ministry of Finance and Another Vs. S.B. Ramesh, Wherein it was held that it was necessary to cross-examine the delinquent when he does not choose to examine himself.

h) State Monk of India and Ors. v. T.J. Paul, Kochi 1998IILLJ 105 : Wherein it has been laid down as to the power of discretion in cases of disproportionate punishment. Merely reiterating the conclusion of enquiry by the authority without considering the defence of the delinquent would be invalid.

i) Lalit Popli v. Canara Bank and Ors. 2003 SCC (L& S) : That on the doctrine of proportionality, the respondents have failed to consider the service of over 35 years put in by the petitioner in imposing a major penalty in respect of an alleged misconduct.

And therefore, the counsel for the petitioner would submit that the petition be allowed.

5. Per contra, the counsel for the respondents would submit that the petitioner was working as a Senior Manager in the Middle Management Grade Scale III and he was imposed with the punishment of compulsory retirement in the light of proven misconduct. It is denied that the action initiated against the petitioner was on the basis of a complaint of the year 1994. Annual inspection of Panambur branch revealed serious irregularities in sanction, disbursal and follow up of advances. An investigation initiated revealed various deficiencies on the part of the petitioner inasmuch as Rs. 459.62 lakh were advanced and this was a large disbursal compared to the earlier advance of Rs. 133.29 lakh. Major penalty proceedings were initiated and though list of documents was not annexed to the charge sheet, the petitioner was permitted to verify the bank records and to submit his statement of defence. As the petitioner denied all the charges, Inquiring authority was appointed and on commencement of the enquiry, the Presenting Officer appointed, produced copies of documents during preliminary hearing and the petitioner was permitted to inspect the originals. These documents were admitted during the enquiry and hence no prejudice is caused to the petitioner. Though additional documents sought for by the petitioner could

not be provided, the Inquiring Authority has noticed such non-production in arriving at the findings. It is also not correct that the petitioner was denied an opportunity to lead evidence. From the records it can be seen that the petitioner had clearly stated that there is no witness on the defence side and the said proceedings are duly signed by the petitioner. Further, the request for production of inspection report was turned down by the Inquiring authority and this was accepted by the petitioner, when in Tumkur. Therefore, it is not open for the petitioner at this belated stage to complain against the same. The enquiry has been held in conformity with the Regulations and the standard of proof as established, applicable to the disciplinary proceedings being preponderance of probabilities, there is no infirmity as sought to be urged by the petitioner. The insistence on the part of the petitioner that witnesses ought to have been examined in support of the documents, was not necessary since the documents produced were admitted at the time of enquiry, and the Enquiry Officer has rightly proceeded on the basis of the said documents. The contention that the Disciplinary Authority has passed the order without reference to the same is also not demonstrated. As is made out from the documentary evidence, the petitioner has acted in a manner prejudicial to the interest of the bank and therefore, was in gross misuse of power and in gross violation of bank''s regulations. He would submit that the several judgments sought to be relied upon by the petitioner would not apply to the facts and circumstances of the present case and since a plain perusal of the material on record would indicate that the bank has complied with the regulations in proceeding to hold the enquiry and charges against the petitioner having been proved, appropriate punishment has been imposed. There is no ground for interference. The counsel would further submit that though it is true that in terms of Regulation 6(17) which lays down that if an employee has not examined himself, the Enquiry Officer shall generally question him on the circumstances appearing against him in the evidence for purposes of enabling him to defend his case to the extent of circumstances appearing in the evidence against him. He would submit that this does not prejudicially affect the enquiry and hence would not vitiate the proceedings.

6. By way of reply, the counsel for the petitioner would submit that in so far as the requirement of examination by the Enquiry Officer in the event that the employee has not chosen to examine himself, the Supreme Court in the case of State Bank of Patiala and others Vs. S.K. Sharma, has laid down as follows:

In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the principle laid down in B. Karunakar''s case AIR 1994 SCW 1050. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

7. On these rival contentions, having regard to the failure on the part of the Enquiry Officer in not conforming to the mandatory provision and this being an admitted position, the enquiry is vitiated, as held by the Supreme Court. Since it is not possible to hold that the petitioner was in a position to rebut the evidence against him by way of defence, the obligation was mandatory on the Enquiry Officer in this regard. The Enquiry Officer having failed in this regard, the further contentions need not be addressed at all. The entire enquiry stands vitiated on account of this. In this view of the matter, the petition deserves to be allowed and the order of compulsory retirement requires to be set at naught.

8. Accordingly, the petition is allowed. The impugned order Annexure "O" is quashed. The respondents are directed to reinstate the petitioner into service. The petitioner is held entitled to 50% of the back-wages from the date of dismissal till reinstatement and other consequential benefits.

