

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

W.P.Nos.1821 & 1827 of 2004

%24-03-2015

#K.Srinivas Petitioner.

Versus

\$The AP State Co-operative Bank, rep. by its Chairman and
Managing Director, Troop Bazar, Hyderabad and another.

..... Respondents.

< GIST:

> HEAD NOTE:

!Counsel for the petitioner in W.P.No.11868 of 2008 : Sri S. Sridhar

!Counsel for the petitioner in W.P.Nos.13872
and 13882 of 2008 : Sri Vijay Kumar Heroor

!Counsel for the petitioner : Sri S.Lakshma Reddy

^ Standing Counsel for the respondent-Bank : Sri A.H.Rama Krishna

? Cases referred

[¹] (1998) 7 S.C.C. 84

² AIR 1999 S.C. 3734

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

W.P.Nos.1821 & 1827 of 2004

COMMON ORDER:

The petitioner in both these Writ Petitions is one and the same and the respondents are common in both the Writ Petitions. Therefore, these two Writ Petitions were heard together and a common order is being delivered.

Brief facts leading to file these Writ Petitions are as under:

2. The petitioner herein was appointed as a Staff Assistant

in the erstwhile Andhra Pradesh Central Cooperative Land Mortgage Bank on 30-12-1969. He was promoted as Superintendent on 18-04-1977 and when the said Bank was merged with the AP State Cooperative Bank (for short 'the Bank'), the petitioner's services were transferred to the said Bank and his services were being utilized as Assistant Development Officer (Legal Assistant) (ADO/LA). By 1998, he was given designation as Junior Officer in the Bank.

3. On 30-12-1998, a charge memo was issued to the petitioner wherein it was alleged that while working as ADO/LA at Sangareddy Branch of the Bank, he has scrutinized loan applications of Medak DCCB approving the title of the applicants to the security offered and recommended loans of 76 loan applications, violated circular instructions and exhibited gross negligence causing deficit in security and committed other administrative lapses.

4. It was also alleged that he exhibited gross negligence in approving the title of the applicants to the hypotheca which caused deficit in security resulting in loss to the PACS/Bank and that he is also liable for Rs.3,67,080/- jointly with members of the Field Inspection Team and individually for Rs.8,14,130/- totaling to Rs.11,81,210/- besides disciplinary action.

5. He was asked to submit explanation within two weeks from the date of receipt of the said charge memo. The petitioner did not submit any explanation to the charge memo.

6. An enquiry was ordered by appointing Smt. G.Shashikala, AGM as enquiry officer vide Memo dt.01-08-2000. She conducted enquiry and submitted an enquiry report dt.31-12-

2000 holding that allegations mentioned in the charge memo were not proved.

7. The Persons In-charge Committee of the Bank in a meeting held on 21-05-2001, considered the charge/allegations and findings of the enquiry officer but did not accept any of the findings of enquiry officer on the ground that some of the findings were not based on the record. It therefore decided to deal with the issue of fixation of financial liability separately while taking a decision of inflicting the punishment for lapses of petitioner.

8. The petitioner was issued a show cause notice dt.31-05-2001 to show cause within 15 days from the date of receipt of the said notice as to why proposed punishment of demotion without pay and protection should not be inflicted on him.

9. The petitioner submitted his explanation on 01-08-2001 and 12.09.2001.

10. The Committee of Persons In Charge of the Bank in a meeting held on 07-01-2002, after examining the gravity of the charges, the findings of the enquiry officer apart from the contentions of the petitioner in his explanation dt.01-08-2001 and 12-09-2001, passed a Resolution No.11 rejecting his request for giving an opportunity for personal hearing and decided to confirm the proposed punishment of demotion to the next post of Staff Assistant for a period of one year or his superannuation whichever is earlier, without pay protection while reserving the right to fix financial liability on him for the loss caused to the Bank as a consequence of his lapses in the scrutiny of long term loan applications in due course. It was also resolved that specifying the period of demotion will not confer a right on the petitioner to get the original post on the expiry of the said period. This decision was

communicated by the Managing Director of the Bank to the petitioner vide proceedings dt.21.2.2002.

11. An appeal against the said decision was preferred by the petitioner to the competent authority i.e. General Body of the Bank.

12. The appellate authority in a meeting held on 23-09-2002 vide resolution No.4 partly allowed the appeal as regards the quantum of punishment and directed that the petitioner be placed in the minimum scale of the post held by him prior to demotion subject to fixation of financial liability. This was communicated to the petitioner vide proceeding dt.05-10-2002 of the Managing Director of the Bank.

13. As a consequence to the orders passed in the appeal, the petitioner's pay was re-fixed at Rs.3,970/- in the minimum pay scale of the Junior Officer/Manager with effect from 21-02-2002 vide proceedings dt.23-12-2002.

14. In the meantime, the petitioner retired from the service of the Bank with effect from 31-03-2002 on attaining the age of superannuation.

15. The petitioner filed W.P.No.1827 of 2004 seeking a to call for the records of the proceedings dt.5.10.2002 as well as proceedings dt.21.12.2002; to quash the same by issuing a Writ of Certiorari; to declare that they are illegal, without jurisdiction, violate principles of natural justice; and for grant of all consequential benefits with continuity of service, increments apart from arrears of pay as Junior Officer/Asst.Development Officer with interest.

16. *Inter alia*, the petitioner contended that the disciplinary authority of the Bank had no power to differ with the findings of the

enquiry officer under the Service Rules, and even assuming that such power existed, it had no power to impose punishment while differing with the findings of the enquiry officer without first issuing a notice and giving opportunity to the petitioner to show cause against the reasons for differing with the findings of the enquiry officer. It is also contended that the penalty imposed on the petitioner was not prescribed in the service regulations and therefore the order refixing him to the minimum scale in the post of Junior Officer is illegal and without jurisdiction.

17. Learned counsel for the petitioner reiterated the above submissions and relied upon the judgment of the Supreme Court in **Punjab National Bank and others Vs. Kunj Behari Misra**^[1] and **Yoginath D. Bagde Vs. State of Maharashtra and another**^[2] in support of his contention that even if there is no provision in the service regulations, it was incumbent upon the punishing authority to give notice to the delinquent employee if the said authority desired to differ with a favourable finding of the enquiry officer.

18. In the counter affidavit filed by the respondents in W.P.No.1827 of 2004, the respondents submitted that the Committee of the Persons In-charge of the Bank had decided not to accept the findings of the enquiry officer exonerating the petitioner; that show cause Notice dt.31-05-2001 was issued to the petitioner explaining in detail why it did not agree with findings of the enquiry officer and differed with them; and that his objections/explanations were called to show cause why proposed punishment of demotion to the lower post of Staff Assistant should not be done. According to the respondents, the petitioner submitted his explanation vide his letter dt.01-08-2001 and 12-09-2001 to the show cause notice; and therefore, he cannot complain

that no opportunity was given to him for differing with the findings of the enquiry officer.

19. I have noted the submission of both sides.

20. In **Kunj Behari Misra** (1 supra), the Supreme Court held that if the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority, which is deciding against the delinquent officer, must give him an opportunity of being heard, for otherwise he would be condemned unheard; this is necessary because in departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority; and it would be most unfair and iniquitous if the charged officers were to succeed before the enquiry officer, and they are deprived of representing to the disciplinary authority, before that authority differs with the enquiry officer's report; and, while recording a finding of guilt, that authority imposes punishment on the officer. It held that in such a situation, the charged officer must have an opportunity to represent to the disciplinary authority before final findings on the charges are recorded and punishment is imposed. It held that whenever the disciplinary authority disagreed with the enquiry 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 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. It held that the principles of natural justice require the authority which has to take final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct

to file a representation before it records its findings and the charges framed against the officer.

21. This principle was again reiterated in **Yoginath**

D.Bagde

(2 supra) wherein it was declared:

“It is open to the disciplinary authority either to agree with the findings recorded by the enquiring authority or disagree with those findings. If it does not agree with the findings of the enquiring authority, it may record its own findings. Where the enquiring authority has found the delinquent officer guilty of the charges framed against him and the disciplinary authority agrees with those findings, there would arise no difficulty. So also, if the enquiring authority has held the charges proved, but the disciplinary authority disagrees and records a finding that the charges were not established, there would arise no difficulty. Difficulties have arisen in all those cases in which the enquiring authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated, but the disciplinary authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically by the rules made under Article 309 of the Constitution or the disciplinary authority may, of its own, provide such an opportunity. 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 enquiring 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 enquiring 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 enquiring 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.

29. We have already extracted Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 which enables the disciplinary authority to disagree with the findings of the enquiring authority on any article of charge. The only requirement is that it shall record its reasoning for such disagreement. 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 the disciplinary authority finally disagrees with the findings of the enquiring 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 enquiring 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 enquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of "not guilty" already recorded by the enquiring authority was not liable to be interfered with."

22. In the present Writ Petition, admittedly the enquiry officer in her report dt.31-12-2000 totally exonerated the petitioner. Thereafter, the matter was placed before the Committee of Persons In- charge of the Bank which was the disciplinary authority to impose punishment. The said committee, in a meeting held on 21-05-2000, did not accept the findings of the enquiry officer and issued a show cause notice to the petitioner to show cause why the proposed punishment of demotion should not be inflicted on him within 15 days from the date of receipt of that show cause notice.

23. No doubt in the said show cause notice, reasons for differing with the decision of the enquiry report were given but they were not 'tentative' and it appears as if the disciplinary authority has finally determined that the report of the enquiry officer and the reasons given by her, are not correct. This can be gauged from the following statements in the show cause notice dt.31.5.2001 of the Managing Director of the Bank asking petitioner to show cause

why the proposed punishment of demotion without pay protection should not be inflicted on him.

“The allegation (1) is that the said ADO has violated circular instructions contained in Cir. No.33/IDD/SWC/95-96 dated 19-09-1995 and conducted legal scrutiny of (12) loan applications of DCC Bank of Medak and approved the title of the applications basing on the revenue records not duly verified and attested by the Field Inspecting Officer.

Therefore the finding of the Enquiry officer that the instructions issued in circular No.33/IDD/SWC/95-96 dated 19-09-1995 are not violated is only partially accepted by the Committee of Persons-in-Charge. Thus he is made liable for the financial loss caused to the Bank.

The allegation II, held as not proved by the Enquiry Officer is that ‘the said Sri K.Srinivas was negligent in scrutiny of loan applications and his negligence resulted in release of loan amounts in favour of the persons who do not have marketable title to the security offered and resulted in advancement of Rs.8,14,130/- in 37 loan applications. *But this finding of the Enquiry Officer is not accepted by the Committee of Persons-in-Charge.*

The allegation No.III is that the charged employee committed various other irregularities of administrative nature in scrutiny of (27) loan applications. The Enquiry Officer observed that in the case of purchase of Oil Engine/Electric Motor, 50% cost of the machinery is added to the estimated value of the land while arriving at loan eligibility and similarly the cost of Generator was added to the land value in some of the loan applications, though there are no circular instructions as to whether to add or not the cost of Generator to the estimated value of the land, and as the Generator is also a machine, the cost of it was added treating it on par with electric motor/oil engine. *The findings of the E.O. are not accepted by the Committee of Persons-in-Charge, since in the absence of the any circular instructions, the Charge-sheeted Officer should not have accepted the valuation by adding Generator cost and he should have sought instructions from higher authorities. Hence it is a lapse on his part.*

On close examination of the facts of the case and keeping in view the findings of the Enquiry Officer the charge-sheeted Officer *has committed* the following irregularities in scrutiny of loan applications, besides accepting fake revenue records/certificates in a large number of cases and thereby facilitating irregular sanctions.

In view of the above, *it is noted by the Committee of*

Persons-in-Charge that the charge-sheeted officer violated circular instructions and exhibited gross negligence and committed grave misconduct as per S.R.No.47 (i) of APCOB service conditions (though charge was framed under SR No.77 (i) of erstwhile APCCADB, the SRs of APCOB are made applicable to him in view of inserting Rule 73 (b) to APCS Rules) and the charge-sheeted employee is punishable with any of the penalties prescribed under SR No.48 of APCOB by the competent authority prescribed under SR No.52.

Further the Committee of Persons In-Charge considering the above and by not accepting the findings of the E.O. and in view of the gravity of proven grave misconduct committed by the Charge-sheeted Officer, decided to inflict the punishment of demotion to the post of Staff Assistant for a period of one year or his superannuation whichever is earlier subject to eligibility/selection norms and availability of vacancies etc. against Sri K.Srinivas, J.O. besides reserving the right to the Bank to fix financial liability on him for the loss caused to the DCCB as a consequence of his lapses in the scrutiny of LT loan applications in Medak, DCCB in due course after securing the requisite information from the said DCCB.

Therefore Sri K.Srinivas, J.O. is called upon to show-cause, if any, within 15 days from the date of receipt of his show-cause notice as to *why the proposed punishment of demotion should not be inflicted on him*, failing which, it would be construed that he has no plausible explanation to offer and further action will be taken as per rules.”

24. The petitioner gave an explanation on 01-08-2001 to the said show cause notice requesting that he may be exonerated from the charges. The same was not accepted by the Committee of Persons

In-charge which imposed the punishment of demotion from the post of Junior Officer/Manager to the next lower post of Staff Assistant for a period of one year or his superannuation, whichever is earlier, without pay protection reserving the right to the Bank to fix up financial liability on him for the loss/non recovery caused to the Bank as consequences of lapses in the scrutiny of LT loan applications.

25. As per the law laid down in the above decisions **Kunj**

Behari Misra (1 supra) and **Yoginath D. Bagde** (2 supra), the disciplinary authority is expected to communicate to the petitioner *tentative* reasons for disagreeing with the findings of the enquiry officer, so that the petitioner may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiry authority, are not germane and that the finding that he is “not guilty” already recorded by the enquiry authority, was not liable to be interfered with.

26. In the present case, this was not done. The show cause notice dt.31-05-2001 asked the petitioner to show cause why the proposed punishment of demotion should not be inflicted on him and contained a *final determination* by the disciplinary authority (i.e the Persons In Charge Committee) that the findings of the enquiry officer are not correct. As per the above decisions, the show cause notice should have asked the petitioner only to show cause as to why, for the *tentative* reasons indicated for disagreeing with the findings of the enquiry authority, the disciplinary authority should not disagree with the findings of the enquiry authority. This would enable the petitioner to represent before the disciplinary authority before final findings on the charges are recorded that the view of the enquiry officer was correct and there was no case made out to disagree with the findings of the enquiry officer. Fairness and equality would require that such a course of action be adopted.

27. Since admittedly this requirement of law has not been followed, the decision of the Committee of Persons Incharge of the Bank in their meeting held on 07-01-2002 vide resolution No.11 confirming the punishment of demotion to the next lower post of Staff Assistant for a period of one year or his superannuation

whichever is earlier (as communicated by the proceedings dt.21-02-2002 of the Managing Director of the Bank to the petitioner) *and* the decision of the appellate authority i.e. the General body of the Bank in its meeting held on 23-09-2002 vide resolution No.4 modifying the punishment (by placing him in the minimum scale of the post held by him in the post of Junior Officer/Manager) (as communicated by the proceedings dt.05-10-2002 of the Managing Director of the Bank) are liable to be quashed and are accordingly quashed. Consequently proceedings dt.21-02-2002 of the Managing Director of the Bank and proceedings dt.23-12-2002 of the Deputy General Manager (ADM of the Bank) also cannot stand and are accordingly set aside.

28. The effect of this would be that the petitioner would be deemed to have continued in the post of Junior Officer/Manager till he retired on 31-03-2002 in the same scale of pay of Junior Officer/Manager as he would have been on the date when he had retired from service i.e.31-03-2002.

29. Although the learned counsel for the respondents sought for remand of the matter to the disciplinary authority again in order to rectify this irregularity committed by the respondents, I am not inclined to accede to the said request for the reason that the petitioner is no longer in service, having retired on 31-03-2002, and no provision in the Service Regulations is pointed out by counsel for respondent which permits the conduct of a disciplinary enquiry against a retired employee of the Bank. Also it would be unjust to now direct the disciplinary proceedings to be revived 12 years after orders were passed by the respondents.

30. For the above reasons, W.P.No.1827 of 2007 is allowed.

31. Coming to W.P.No.1821 of 2004, the petitioner in this Writ Petition had questioned the proceeding dt.26-12-2003 of the 2nd respondent communicating to the petitioner the decision of the Person Incharge Committee of the Bank in it's meeting held on 28.11.2003 fixing the financial liability of Rs.1,30,232/- on him, being the deficit in securities for certain loans pertaining to the Bank. The basis for this order is the decision of the Committee of the Persons In charge taken on 07-01-2002 vide resolution No.11 demoting the petitioner to the post of Staff Assistant from the post of Junior Officer/Manager for a period of one year or the superannuation, whichever is earlier, as modified by the decision of the appellate authority i.e. the General body of the Bank in its meeting held on 23-09-2002 vide resolution No.4 reducing the punishment (by placing him in the minimum scale of the post held by him in the post of Junior Officer/Manager) (as communicated by the proceedings dt.05-10-2002 of the Managing Director of the Bank).

32. This is clear for the impugned order dt.26.12.2003 wherein, after referring to the explanation dt.20.10.2003 of the petitioner why he cannot be made to pay this amount (in reply to the show cause notice dt.9.4.2003 issued by respondents), it is stated :

“ With regard to the above contentions, he is informed that the disciplinary authority and the Appellate authority have already examined his contentions earlier and the Appellate authority disposed of his appeals, by reducing the punishment inflicted earlier, which was also communicated to him”

33. Since the said proceedings of the disciplinary and appellate authority itself have now been set aside in W.P.No.1827 of 2004, the proceeding dt.26-12-2003 of the 2nd respondent communicating to the petitioner the decision of the Person In

charge Committee of the Bank in it's meeting held on 28.11.2003 directing the petitioner to pay a sum of Rs.1,30,232/- is also set aside. Accordingly, W.P.No.1821 of 2004 is also allowed.

34. In the result, both the Writ Petitions are allowed; the decision of the Committee of Persons Incharge of the Bank in their meeting held on 07-01-2002 vide resolution No.11 confirming the punishment of demotion to the next lower post of Staff Assistant for a period of one year or his superannuation, whichever is earlier (as communicated by the proceedings dt.21-02-2002 of the Managing Director of the Bank to the petitioner), *and* the decision of the appellate authority i.e. the General body of the Bank in its meeting held on 23-09-2002 vide resolution No.4 modifying the punishment (by placing him in the minimum scale of the post held by him in the post of Junior Officer/Manager) (as communicated by the proceedings dt.05-10-2002 of the Managing Director of the Bank) are quashed; the proceeding dt.26-12-2003 of the 2nd respondent communicating to the petitioner the decision of the Person Incharge Committee of the Bank in it's meeting held on 28.11.2003 that petitioner shall pay Rs.1,30,332/-, is also set aside; it is declared that petitioner is entitled to all consequential benefits with continuity of service upto 31.3.2002, increments (if any) apart from arrears of pay as Junior Officer/Asst.Development Officer for the period 17.1.2002 till 31.3.2002 with interest @ 9% p.a from 17.1.2002 till date of payment of the same by respondents. Any payment made by the petitioner to the respondents pursuant to the proceeding dt.26.12.2003 of the 2nd respondent shall also be refunded to him by respondents with interest @ 9% from the date of such payment by him till it's repayment by respondents. Costs of Rs.2,000/- also shall be paid by the respondents to the petitioner within a period of four weeks

from the date of receipt of a copy of this order.

35. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 24-03-2015

Note:

L.R. copy to be marked: Yes

B/o.

kvr

[\[1\]](#) (1998) 7 S.C.C. 84

[\[2\]](#) AIR 1999 S.C. 3734