

* HON'BLE SRI JUSTICE R.KANTHA RAO

+ Writ Petition No.13987 of 1999

% 17-3-2015

A.Susheel Kumar

... Petitioner

Vs.

\$ The General Manager (Personnel),
Syndicate Bank (Personnel Dept.),
Officers' Wing, Post Box No.1,
Head Office, Manipal-576 119;
and another

... Respondents

! Counsel for the Petitioner: Sri J.Sudheer

Counsel for the Respondents: Ms. Uma Devi,

Standing Counsel

< Gist:

> Head Note:

? Cases referred:

1. (1998) 4 SCC 154
2. (2006) 5 SCC 88
3. (2005) 6 SCC 636
4. AIR 1996 SC 1669
5. (1995) 6 SCC 279

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.13987 of 1999

Date: 17-3-2015

Between

A.Susheel Kumar

... Petitioner

and

The General Manager (Personnel),

Syndicate Bank (Personnel Dept.),

Officers' Wing, Post Box No.1,

Head Office, Manipal-576 119;

and another

... Respondents

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.13987 of 2015

Order:

This writ petition is filed seeking to issue Writ of *certiorari* or any other appropriate direction to quash the proceedings dated 27-02-1999 and 19-11-1998 issued by the respondents 1 and 2, respectively, on the ground that they are arbitrary, illegal and violative of Articles 14 and 21 of the Constitution of India and also the principles of natural justice and to further direct the respondents to reinstate the petitioner into service with all consequential benefits.

2. The petitioner while working as an Officer-in-charge of

Asifnagar Lines Extension Counter attached to Mehdipatnam Branch, Hyderabad from 19-6-1989 to

25-8-1992 allegedly committed certain serious/major irregularities at Extension Counter/Base Branch. A charge-sheet was served on him on 26-6-1997 with the following Articles of Charge:

“a) allowing debit balances in SB accounts of self/ customers without reporting to competent authorities/ obtaining their approval even though powers were not vested with the EC to allow debit balances/over drawals in SB accounts;

b) not recovering debit balance allowed in SB a/c resulting in filing suit;

c) tampering/inflating the current a/c debit total to tally the day book and extracting wrong balancing in SB a/c thereby falsifying the books of accounts;

d) authorising suspicious, questionable and objectionable transactions inter alia indicating your personal involvement in certain DL accounts;

e) discounting cheques drawn on self a/c and maintaining CDD head of a/c in the books of EC violating the guidelines;

f) resorting to financial dealings/borrowal with the customers of EC; and

series of other irregularities in the above process.

You thus misused your official position in a highly irregular manner causing detriments to the interest of the Bank duly also exposing the bank to financial risk.

By your above acts you failed to discharge your duties with utmost integrity and honesty and exhibited conduct unbecoming the status of a bank officer and thus contravened regulation no.3(1) read with regulation no.24 of Syndicate Bank Officer Employees' (Conduct) Regulations, 1976.”

3. The Statement of Imputations of Misconduct on the part of the petitioner has been elaborated and a detailed Statement of Articles of Charge was served on the petitioner asking him to show cause as to why the disciplinary proceedings shall not be initiated against him.

The petitioner submitted an explanation denying the aforementioned charges. The Department did not accept the explanation offered by the petitioner and initiated regular departmental enquiry against him by appointing

an Enquiry Officer. The Enquiry Officer conducted an enquiry against the petitioner in which the petitioner participated. The Investigating Officer, who made investigation into the allegations levelled against the petitioner, was examined as MW1 on behalf of the Department and several documents were marked.

The petitioner cross-examined the said witness and examined some defence witnesses on his behalf.

The Enquiry Officer after concluding the enquiry, submitted a report to the Disciplinary Authority holding that five charges held against the petitioner have been duly proved and the 6th charge has been proved in part.

The Disciplinary Authority, after affording an opportunity to the petitioner to show cause against the enquiry report rejecting the explanation submitted by the petitioner, imposed the punishment of dismissal from service.

In appeal against the said order, the Appellate Authority confirmed the order passed by the Disciplinary Authority.

It is under the aforementioned circumstances, the petitioner filed the present writ petition.

4. In the writ petition, it is submitted by the petitioner that the irregularities alleged against him are only procedural in nature and they pertain to the period from 19-6-1989 to 25-8-1992, whereas the charge-sheet was served on him on 26-6-1997 i.e. after lapse of 5 years and therefore, the punishment imposed on him is liable to be set aside. It is nextly submitted that the respondents even without serving any show cause notice prior to issuance of the charge-sheet, straightaway opined that an enquiry is going to be conducted against him and therefore, the procedure adopted is illegal as it denied him the reasonable opportunity to submit his version and is in violation of

the principles of natural justice. It is further submitted that any such irregularities have not been committed by him and they ought not to have been taken cognizance of by the Department after a lapse of 5 years as they do not amount to misconduct as per Regulation 6 of Syndicate Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 (1976 Regulations, for short).

5. It is further submitted that except the Investigating Officer no material witness was examined to prove the documents filed by the Department and also that the mandatory requirement to furnish the report of the Investigating Officer to him was not followed by the Enquiry Officer to enable him to make effective cross-examination. According to the petitioner, all the 167 documents which were produced during the enquiry were marked by the Investigating Officer and no material witness was examined to prove the documents and therefore, the Disciplinary Authority as well as the Appellate Authority went wrong in accepting the findings of the Enquiry Officer. It is also submitted that once the Investigating Officer has been cited as a witness it becomes right of the charged officer to have a copy of the report of the Investigating Officer for the purpose of cross-examining the Investigating Officer but the same was not provided to him which amounts to denial of reasonable opportunity and violation of principles of natural justice. It is reiterated by the petitioner that the irregularities and lapses levelled against him are not chargeable in nature and they do not attract any punishment under the 1976 Regulations and therefore, he is entitled to be reinstated into service with all consequential benefits.

6. In the Counter Affidavit filed by the respondents, it has been contended *inter alia* as follows:

Since the serious irregularities committed by the petitioner have come to light subsequently, there was delay in initiating enquiry

against the petitioner and therefore, the enquiry cannot be said to be vitiated on the ground of delay. The petitioner worked as an Officer-in-charge of Asifnagar Lines Extension Counter between 19-6-1989 and

25-8-1992. The irregularities have come to light subsequent to the transfer of the petitioner from the said Extension Counter and therefore, it is not open for the petitioner to contend that after lapse of 5 years, no enquiry shall be initiated against him. Thus, according to the respondents, soon after noticing the irregularities committed by the petitioner, the enquiry has been initiated and therefore, there is no delay in initiating enquiry against the petitioner. It is submitted that as per Regulation 6 of 1976 Regulations, where it is proposed to hold an enquiry, the Disciplinary Authority shall frame definite and distinct charges on the basis of charges against the officer employee and statement of allegations on which they are based shall be communicated in writing to the officer employee,

who shall be required to submit within the prescribed time a written statement of his defence. In the instant case, the same procedure has been followed and therefore, it is well within the jurisdiction of the Disciplinary Authority to issue the charge-sheet informing the petitioner that an enquiry is proposed to be held against him furnishing Articles of Charge and Statement of Imputations of Misconduct and to call for the written statement of his defence. Therefore, there is no procedural irregularity in initiating the enquiry against the petitioner. It is submitted that the Discipline and Appeal Regulations governing the petitioner do not stipulate issuing of a prior show cause notice or a memo or explanation before issuing of a charge-sheet under Regulation 6 of 1976 Regulations. It is further submitted that the Discipline and Appeal Regulations governing the petitioner do not mandate for providing list of documents/witnesses or copies of documents along with the charge-sheet itself while calling for his written statement of defence. According to the respondents, in the present case, the petitioner was provided with the list of documents/witnesses as well as copies of documents during the preliminary enquiry held on 16-9-1997 and was afforded the

opportunity for verifying/inspecting the copies of documents and the petitioner in reply to the show cause notice issued along with the charge-sheet, has denied all the charges levelled against him terming them malicious, fabricated, concocted and totally devoid of any truth and requested to provide him an opportunity in the regular departmental enquiry to put forth his regular defence. Therefore, the version of the respondents is that in the absence of any specific request prior to 16-9-1997 for furnishing any such list of documents, it cannot be said that there has been any denial of reasonable opportunity to the petitioner and violation of principles of natural justice as contended by him. It is submitted by the respondents that the charge-sheet included procedural irregularities as well as serious irregularities which included falsification of documents and the details thereof have been furnished to the petitioner so as to enable him to offer his explanation and also to cross-examine the witnesses at the enquiry.

7. As to the evidence before the Enquiry Officer, it is submitted that all the material documents were brought on record and the Investigating Officer was examined to prove the documents and the petitioner cross-examined the Investigating Officer by putting 69 searching and probing questions in the lengthy cross-examination stretching over a period of 3 days. Therefore, it is submitted that there is no substance in the contention that no sufficient opportunity was afforded to the petitioner to defend the charges. Nextly, it is submitted that the petitioner was also permitted to adduce defence evidence on his behalf and therefore, it is not open for him to contend that there was no fair and impartial enquiry. Since the documents themselves speak about the irregularities and as they have been duly proved by the Investigating Officer, it is submitted by the respondents that there is no force in the contention that the charges have not been proved by examining any witnesses.

8. It is further submitted that Regulation 24 of Syndicate Bank Officer Employees' (Conduct) Regulations, 1976 (Conduct Regulations, for short) clearly mentions that breach of any of the provisions of the said Regulations shall be deemed to constitute misconduct punishable under 1976 Regulations and therefore, in the instant case, the petitioner was charged for breach of Regulation No.3(1) read with Regulation No.24 of Conduct Regulations and thus, it is not open for the petitioner to contend that there is no breach of Conduct Regulations. It is further submitted that the orders passed by the Disciplinary Authority as well as the Appellate Authority are speaking orders which were passed after thoroughly considering the evidence placed at the enquiry and therefore, those findings cannot be called in question in the present writ petition filed under Article 226 of the Constitution of India.

9. In the Reply Affidavit, the petitioner reaffirmed the same contentions put forth in the Affidavit filed initially in support of the writ petition.

10. I have heard Sri J.Sudheer, learned counsel appearing for the petitioner and Ms. Uma Devi, learned Standing Counsel for the respondents 1 and 2-Syndicate Bank.

11. In support of his contention, the learned counsel appearing for the petitioner relied on **STATE OF A.P. v. N.RADHAKISHAN** in which case, the Hon'ble Supreme Court has dealt with the issue of delay in conclusion of departmental enquiry when vitiates the proceedings.

The Supreme Court held that there are no predetermined principles applicable to all cases and in all situations, and each case has to be considered taking into account all relevant facts and circumstances

and therefore, balance has to be maintained between purity of administration and the adverse effect which the prolonged proceedings have on an employee. The Supreme Court further held that the unexplained delay in conclusion of the proceedings itself is an indication of prejudice caused to the employee and thus, the Supreme Court quashed the proceedings before it on the ground of delay in concluding the departmental enquiry.

12. In **M.V.BIJLANI v. UNION OF INDIA** relied on by the learned counsel appearing for the petitioner, the Supreme Court took the view that the delay in initiation of disciplinary proceedings after 6 years and continuance thereof is prejudicial to the delinquent officer and the Supreme Court ultimately held that if the employee had not reached the age of superannuation, he shall be reinstated into service with 50% of back wages.

13. In **P.V. MAHADEVAN v. MD, T.N. HOUSING BOARD** relied upon by the petitioner, the Supreme Court took the view that the inordinate delay of 10 years in initiating departmental enquiry against the appellant when no convincing explanation in respect of the delay was offered by the respondent-employer, in the circumstances of the case, allowing the respondent to proceed further with departmental proceedings at this length of time would be very prejudicial to the appellant and the Supreme Court ultimately quashed the charge memo issued against the employee.

14. In the above cases, the Supreme Court granted relief to the employees where there has been delay in initiating the disciplinary proceedings and also delay in concluding the disciplinary proceedings. The Supreme Court made it clear in all the above judgments that each case has to be decided with reference to its own facts and no pre-determined principles can be laid down.

15. In the instant case, in the regular course of

an audit conducted in the respondents-Bank, the irregularities allegedly committed by the petitioner have not been pointed out. Only after the transfer of the petitioner and after lapse of 5 years, during the course of inspection of the records conducted by the Bank, the irregularities committed by the petitioner came to light. Thereafter, a thorough investigation was ordered and in the investigation, the Investigating Officer confirmed the irregularities committed by the petitioner. Since the irregularities came to light only after transfer of the petitioner, it is not open for the petitioner to contend in the facts and circumstances of the present case that on account of the delay, the entire enquiry is vitiated and that no enquiry ought to have been initiated against him. There is no prescribed period in the Service Regulations applicable to the petitioner that the enquiry should be conducted only within a stipulated time. Therefore, the judgments relied upon by the learned counsel appearing for the petitioner are not applicable to the facts of the present case.

16. As regards the contention that no oral evidence was let in to prove the documents brought on record by the Department during the course of the enquiry, it requires to be stated that in a departmental or in any other proceeding no particular number of witnesses are required to be examined. Moreover, in a departmental enquiry the proof required is not proof beyond reasonable doubt just as in a criminal case but the proof required is that of preponderance of probability. The Investigating Officer was examined to prove the documents which he collected during the course of his investigation. All the documents are the documents which were made available to the Investigating Officer during the regular course of business of the Bank and their authenticity cannot be disputed. Since the documents are self-evident transactions contained therein, no further proof as rightly contended by the learned counsel for the respondents is required and they can be said to have been duly proved. Further, this Court in exercise of power of judicial review under Article 226 of the

Constitution of India will not act as a Court of appeal and reappraise the evidence. Unless the findings are based on evidence or some irrelevant material has been considered to record the findings, this Court will not indulge in reappraisal of the evidence to reach a different conclusion basing on the evidence.

17. Insofar as the contention of the petitioner that the copies of documents relied upon by the Department have not been supplied to him along with the charge-sheet, this Court is required to consider as to whether there has been any substantial compliance with the Rules governing the employee or whether there is any violation of principles of natural justice in this case. The respondents have specifically contended that at the time of preliminary enquiry conducted against him, the petitioner was furnished with all the documents and in response to the show cause notice issued after charge-sheet, he submitted detailed explanation refuting all the charges. The petitioner subjected the witness of the Department to thorough cross-examination which went on for 3 days and therefore, this Court is of the view that no prejudice has been caused to the petitioner.

18. In **State Bank of Patiala v. S.K.Sharma**, the Supreme Court was of the view that in the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

19. Further, in **STATE BANK OF BIKANER & JAIPUR v. PRABHU DAYAL GROVER**, the Supreme Court held that when the delinquent's reply indicated that he had fully understood the charge and he had raised no objection during the departmental enquiry or before the appellate authority regarding non-furnishing of the

statement of allegations, non-furnishing of documents cannot be said to have caused any prejudice to the delinquent employee.

20. In the instant case also, the petitioner failed to make out a case before this Court that on account of non-furnishing of required documents along with the charge-sheet and also the report of the Investigating Officer has occasioned any prejudice to him. It is not his case that at no point of time, such documents were furnished to him at all. His only contention is that the documents were not furnished along with the charge-sheet. As to this, the submission made by the respondents is that in the course of the preliminary enquiry itself, all the documents relied upon by the Department were furnished to the petitioner and he could be able to deny all the charges specifically by submitting a detailed written statement. When no prejudice has in fact been occasioned to the petitioner, it is not possible to take a view that the enquiry itself is vitiated. Further, the petitioner, who has not raised the said objection before the Enquiry Officer or Disciplinary Authority, is not permitted to raise this objection in the present writ petition.

21. The last point requires consideration in the present writ petition is the quantum of punishment.

In exercise of powers to judicial review, this Court will not interfere with the quantum of punishment imposed by the Disciplinary Authority which was confirmed by the Appellate Authority unless it is shockingly disproportionate.

In the instant case, whatever may be the nature of the irregularities, there is no actual financial loss caused to the Bank. It was mentioned in the charge-sheet that omissions and commissions resorted to by the petitioner detrimental to the interest of the Bank and also exposed the Bank to the financial risk. The charge also specifically states that the petitioner failed to discharge his duties with utmost integrity and honesty and exhibited conduct unbecoming the status of a bank

officer and thus contravened Regulation No.3(1) read with Regulation 24 of the Conduct Regulations.

22. Having regard to the nature of the charges and their effect on the respondents-Bank, this Court is of the view that the punishment of dismissal from service imposed on the petitioner is grossly disproportionate to the misconduct proved. Therefore, in the writ petition, the punishment of dismissal is set aside and in its place, the punishment of compulsorily retiring the petitioner from service is imposed.

23. With the above modification in the punishment, the writ petition is partly allowed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

R.KANTHA RAO, J.

17th March, 2015.

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Note:-

L.R. Copy to be marked.

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HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.13987 of 1999

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