

**THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

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WRIT APPEAL Nos.1054 AND 1103 OF 2015

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COMMON JUDGMENT: (Per Hon'ble Sri Justice R. Subhash Reddy)

Both these appeals are filed by the respondents in Writ Petition Nos.1821 and 1827 of 2004 aggrieved by the common order, dated 24.03.2015, passed in the said Writ Petitions. As common issues arise for consideration on similar set of facts, both these appeals are heard together and are disposed of by this common judgment.

Respondent was appointed as Staff Assistant in the erstwhile Andhra Pradesh Central Co-operative Land Mortgage Bank in the year 1969. He was promoted as Superintendent in the year 1977. When the said Bank was merged with A.P. State Co-operative Bank, his services were transferred and were being utilised as Assistant Development Officer (Legal Assistant). In the year 1998, he was designated as Junior Officer and in the same year, disciplinary proceedings were initiated against him by framing charges on the ground that while he was working as Assistant Development Officer, he has recommended 76 loan applications in violation of the circular instructions and exhibited gross negligence, which caused loss to the Bank. Based on the same, a charge

memo was issued and the respondent did not submit any explanation to the said charge memo. As such, an Enquiry Officer was appointed and she conducted enquiry and submitted Enquiry Report recording a finding that the charges framed against the respondent – delinquent employee were not proved. Thereafter, the Committee of the Bank issued show-cause notice, dated 31.05.2001, disagreeing with the findings of the Enquiry Officer and calling upon the respondent to file his explanation as to why the proposed punishment of ‘demotion’ without pay protection to the post of Staff Assistant for a period of one year or till his superannuation, whichever is earlier, should not be imposed on him. For the purpose of disposal of these appeals, it is relevant to extract the operative portion of the show-cause notice, dated 31.05.2001, which reads as under:

“The Committee of Persons-in-Charge in their meeting held on 21.05.2001 have decided to delink the issue of fixation of financial liability while taking a decision on inflicting the punishment for the lapses committed. It is decided in the said meeting that after securing the required information from the DCCB regarding the present recovery position in the loan cases involved, further action can be initiated against the charge-sheeted employee in due course for fixation of such financial liability. Further the Committee of Persons In-charge considering the above and by not accepting the findings of

the E.O. holding the charges as not proved since the same are contrary to the facts on record and in view of the gravity of proven grave misconduct committed by the Charge-sheeted Officer, decided to inflict the punishment of 'demotion' without pay protection 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."

Pursuant to the same, the respondent has filed explanation and thereafter, the disciplinary authority has passed final order, dated 21.02.2002, demoting the respondent to the post of Staff Assistant. As against the same, the matter was carried in appeal before the appellate authority and the appellate authority by proceedings, dated 05.10.2002, issued in VC/F.No.981242/98-99, modified the punishment and passed final order to the following effect:

"It is observed that Sri K.Srinivas did not put forth any valid and acceptable new ground in the appeal. **However, taking a lenient view**, the punishment of demotion without pay protection inflicted earlier, is reduced to that of "Placing him in the Minimum Scale of the Post held by him, prior to demotion, subject to fixation of financial

liability required, if any". The Appeal is accordingly disposed off."

Pursuant to the same, the Bank, by proceedings, dated 26.12.2003, communicated the respondent the decision of the Bank fixing the financial liability of Rs.1,30,232/- on him.

Questioning the order, dated 05.10.2002, and the proceedings, dated 26.12.2003, Writ Petition Nos.1821 and 1827 of 2004 are filed. This Court, by impugned order, dated 24.03.2015, allowed the Writ Petitions mainly on the ground that no opportunity was given to the respondent – delinquent employee before disagreeing with the findings recorded by the Enquiry Officer, in view of the judgments of the Honourable Supreme Court in **Punjab National Bank and others v. Kunj Behari Misra**^[1] and **Joginath D. Bagde v. State of Maharashtra and another**^[2].

In these appeals, it is contended by the learned counsel for appellants that in the show-cause notice, dated 31.05.2001, appellants have recorded reasons for disagreeing with the findings of the Enquiry Officer apart from indicating the tentative punishment, and as such, it cannot be said that the show-cause notice is not in conformity with law. It is further submitted that after

receiving explanation from the respondent, final orders are passed, demoting the respondent. In support of his arguments, he has placed reliance on the judgment of the Honourable Supreme Court in **Managing Director, ECIL, Hyderabad and others v. B. Karunakar and others**^[3]. It is further contended that in any event, the learned single Judge ought to have remitted the matters for fresh consideration instead of quashing the orders by allowing the Writ Petitions.

On the other hand, it is submitted by Sri S. Rahul Reddy, learned counsel appearing for the respondent, that no opportunity was given to the respondent indicating the tentative reasons for disagreeing with the findings recorded by the Enquiry Officer. It is further submitted that the show-cause notice, dated 31.05.2001, is not in accordance with the ratio laid down by the Honourable Supreme Court in **Joginath's** case (supra 2). It is further submitted that even before giving opportunity to the respondent, the disciplinary authority has come to a conclusion of differing with the findings recorded by the Enquiry Officer and the show-cause notice is issued only for the purpose of inflicting punishment.

In disciplinary proceedings, where Enquiry Officer records findings against the delinquent employee, it is always open for the disciplinary authority to issue show-

cause notice based on such findings recorded by the Enquiry Officer and impose punishment, and even in a case where the Enquiry Officer records findings in favour of the delinquent employee holding that the charges levelled against him are not proved, still, it is open to the disciplinary authority to differ with such findings, but as per the settled law, before differing with such findings, an opportunity has to be given to the delinquent employee, by recording tentative reasons, before final findings are recorded.

By reviewing the entire case law on the subject, in **Joginath's** case (supra 2), the Honourable Supreme Court has held as under:

“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 and the latter, namely, 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 by any legislative enactment or Service Rule including Rules made under [Article 309](#) of the Constitution."

Though the learned counsel for appellants has placed reliance on the judgment in **Karunakar's** case (supra 3), this aspect is finally settled in view of the judgment in **Joginath's** case (supra 2). In that view of the matter, we are of the view that the findings recorded by the learned single Judge are in conformity with law on the subject. Further, having regard to the nature of charges

framed against the respondent and the findings recorded by the Enquiry Officer, we are of the view that it is not a fit case to remit for fresh consideration and hence, we find no ground to interfere even with regard to the other plea raised by the learned counsel for appellants that the learned single Judge ought to have remitted the matters for fresh consideration. Further, we are informed that the respondent is aged about 73 years now. Apart from the age factor, it is also clear that the entire loss caused by the respondent was already recovered by the Bank. In that view of the matter, we do not find any merit in the other submissions of the learned counsel for appellants.

For the aforesaid reasons, the appeals are dismissed. Miscellaneous Petitions, if any, pending in these appeals, shall stand closed. No costs.

REDDY, J

R. SUBHASH

NARAYANA, J
December 17, 2015
MD

A. SHANKAR

[\[1\]](#) (1998) 7 SCC 84

[\[2\]](#) AIR 1999 SC 3734

[\[3\]](#) (1993) 4 SCC 727