

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

WRIT PETITION No.15098 of 2005

ORDER:

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This Writ Petition is filed seeking a Writ of Certiorari to call for the records relating to and connected with the Person In-charge Committee's Resolution No.20 dt.23-03-2004 and also proceedings dt.27-03-2004 of the Managing Director of the A.P. Cooperative Bank Limited (for short "the Bank") and to quash the same; to direct the respondents to reinstate the petitioner into service as Manager in the Bank with back-wages and all consequential benefits, and to award costs of Rs.5 Lakhs to petitioner.

2. The petitioner was appointed in the Bank initially as Staff Assistant-cum-Assistant Cashier on 18-10-1975 and later promoted as Junior Officer Grade-III, which came to be redesignated as Junior Officer Grade-II-cum-Manager in 1982; he was posted as Branch Manager at Tirupati Office from 1985 to 1991 and subsequently transferred to the Head Office of the Bank on 16-08-1991.

3. He was placed under suspension from 06-11-1991, while working as Manager of the Bank pending enquiry. A charge memo dt.17-08-1992 was served to the petitioner with six articles of charge. Petitioner submitted a detailed explanation to the charge memo on 21-10-1992. An Enquiry Officer was appointed on 24-11-1992 since respondents were not satisfied with the petitioner's explanation. Domestic enquiry was conducted and an enquiry report dt.25-04-1994 was submitted by the Enquiry

Officer to the Managing Director of the Bank. The Enquiry Officer held that petitioner is guilty of 5 charges except charge No.4. The copy of the enquiry report was not furnished to the petitioner. A show cause notice was issued by the Managing Director of the Bank to petitioner on 31-01-1995 to show cause why punishment of dismissal should not be imposed on him. Along with this show cause notice, the enquiry report dt.31-01-1995 was given to petitioner. Petitioner submitted his explanation to the said show cause notice. A punishment of dismissal from service was imposed on petitioner by the Managing Director on 07-04-1995.

4. The petitioner's contention is that the Managing Director of the Bank is not the competent authority to inflict any punishment on him as the disciplinary authority/appointing authority for Officers Grade-II is the Board of Directors of the Bank but not the Managing Director. It is also further contended that while the Enquiry Officer held that charge No.4 was not proved, the Managing Director had imposed punishment of dismissal on 07-04-1995 holding that even the said charge No.4 was proved against him. Petitioner therefore contends that before disagreeing with finding of the Enquiry Officer on charge No.4, the Managing Director ought to have put the petitioner on notice of such disagreement and give him an opportunity to put forth his case; and without doing so, straight away an order of dismissal was passed against petitioner on 07-04-1995, which is unsustainable.
5. The petitioner carried the same by way of appeal to the General Body of the Bank, which confirmed the punishment of dismissal imposed by the Managing Director of the Bank by a

separate order dt.07-12-1995.

6. The petitioner questioned the proceedings dt.07-12-1995 of the appellate authority confirming the order of dismissal dt.07-12-1995 issued by the Managing Director in W.P.No.4056 of 1996.

7. By order dt.06-03-2003, the said Writ Petition was allowed on five grounds:

(1) The contention of the petitioner was that the Enquiry Officer also had some interest in the transaction as she was his immediate superior at the relevant point of time, and therefore she should not be allowed to continue as an Enquiry Officer. This contention was upheld and it was held that the Enquiry Officer ought not to have taken up enquiry and respondents should have entrusted it to some other official;

(2) The Managing Director, who passed the order of dismissal dt.07-04-1995 against petitioner, was not competent to pass such order of dismissal since there was no rule empowering delegation of power to impose punishment by the Disciplinary Authority i.e. Board of Directors of the Bank to the Managing Director;

(3) The Enquiry officer had exonerated the petitioner of any misconduct in respect of charge No.4, but while disagreeing with the same, the Disciplinary Authority had not given any tentative reasons to petitioner to show cause why a different view should not be taken, and this is illegal. Reliance was placed on the judgment of the Supreme Court in **Punjab National Bank Vs. Kunj Behari Misra** in that regard;

(4) Copy of the enquiry report, as per the decision of the Supreme Court in **Managing Director, ECIL Vs. B.Karunakar**, should have been furnished to petitioner before the Disciplinary Authority considers the report of the Enquiry Officer and that the

petitioner should have an opportunity to reply to the Enquiry Officer's findings before the Disciplinary authority comes to its own conclusion and this was not followed;

(5) The punishment of dismissal imposed on petitioner was disproportionate to the charges found proved against petitioner; that having noticed the good service rendered by petitioner, the Enquiry Officer ought to have recommended a lesser punishment and even the disciplinary authority also ought not to have resolved to impose such a severe punishment of dismissal on the petitioner.

8. Ultimately, this Court held:

“ In any case, as already it was held that the impugned is liable to be quashed for non-observance of the principles of natural justice as well as the impugned order was passed by the in-competent authority, the disciplinary authority is directed to reconsider the matter, and if it so chooses, then it is for the said disciplinary authority to consider appropriate punishment, as the punishment, which was already imposed was considered by this Court as disproportionate to the gravity of the charges.”

9. This decision became final and no appeal has been by either party.

10. It appears that this order was not complied with by respondents and so the petitioner filed C.C.No.281 of 2004 before this Court.

11. While the said Contempt Case was pending, the Committee of the Persons-in-charge passed resolution on 23-03-2004 stating that the petitioner committed grave misconduct and punishment of dismissal from service is appropriate, and this decision was informed to the petitioner.

12. On 27-03-2004, the said Contempt Case was dismissed on the ground that there was no disobedience of the directions

of this Court. It was observed in the said order that there was no positive direction by the Court to impose punishment other than dismissal; that the disciplinary authority was only directed to reconsider the matter; and therefore, it cannot be said that there was any Contempt of the orders passed by this Court in W.P.No.4056 of 1996.

13. It is also not in dispute that L.P.A.(SR) No.50706 of 2004 was filed against this order in C.C.No.281 of 2004, but the said appeal was dismissed on 22-11-2004 as not maintainable.
14. The petitioner therefore filed the present Writ Petition to set aside the Person-in-charge Committee Resolution No.20 dt.23-03-2004 and consequential proceedings dt.27-03-2004 of the Managing Director of the Bank informing the petitioner of the decision of the Person Incharge Committee.
15. Heard Sri P. Balaji Varma, learned counsel for petitioner and Sri A.H.Rama Krishna Rao, learned Standing Counsel for respondents.
16. The learned counsel for petitioner contended that the impugned order was passed by respondents relying on the same enquiry report of the Enquiry Officer, in respect of whom this Court in W.P.No.4056 of 1996 had held that she, being the superior Officer of the petitioner, ought not to have taken up the enquiry and the respondents ought to have entrusted it to some other Officials. He contended that therefore the respondents cannot rely on such an enquiry report again and pass the impugned order and they should have asked another enquiry officer to conduct enquiry and submit a report. He also contended that when this Court had held in that Writ Petition that

the punishment of dismissal imposed by the Managing Director on the petitioner was disproportionate to the gravity of the charge, the same punishment could not have been imposed on the petitioner again by the Person In-charge Committee in the impugned order. He therefore contended that there is no application of mind by the respondents to the order passed by this Court on 06-03-2003 in W.P.No.4056 of 1996 and mechanically, the impugned order has been passed.

17. The learned Standing Counsel for respondents, on the other hand, contended that there is no infirmity in the impugned orders and that the Person In-charge Committee of the Bank has considered all the material on record and passed the impugned resolution and it cannot be contended that there is any infirmity in the said decision.

18. I have noted the submissions of both sides.

19. The point for consideration is: Whether the impugned orders passed by the respondents are sustainable?

20. I have already noted the grounds on which W.P.No.4056 of 1996 had been allowed by this Court. In the said order at para-17, this Court held:

"17. The learned counsel also contended that the Enquiry Officer had got some interest in the transactions, as she was the immediate superior officer to the delinquent officer at the relevant point of time, as the Enquiry Officer has worked as Assistant General Manager, having jurisdiction over the Branch, where the delinquent officer was working as a Manager. According to the learned counsel, as the Enquiry Officer had some interest, therefore, the petitioner raised an objection that she should not be allowed to continue as Enquiry Officer and though such objection was raised at the earliest point of time, but, however such petition was not

considered seriously either by the Enquiry Officer or even by the disciplinary authority, which appointed the Enquiry officer, In fact, in the material papers, the petitioner filed certain of the vouchers or copies of the documents which were sent or communicated to the Enquiry Officer (the then Assistant General Manager), who had even counter-signed those documents. In the light of such allegations having been made by the delinquent officer, at the earliest point of time, in all fairness, the Enquiry Officer ought not to have taken up the enquiry and it would have been entrusted to some other official. It is not as if there are no other competent and suitable officers to act as Enquiry Officer. It is settled principle that justice should not only be done but it should appear to have been done. But by allowing the Enquiry Officer, who worked as immediate superior officer of the delinquent officer at the relevant point of time, it would not give the picture of justice seems to have been done.”

21. In the impugned resolution dt.23-03-2004 passed by the Person In-charge Committee, it observed:

“after careful examination of the charges and allegations, findings of the Enquiry Officer and the explanation of Sri Y.G.K.Prasad to the show cause notice and also the facts on record with reference to the charges framed against him, the Committee having applied its mind, is of the opinion that the employee committed the following misconduct, even if benefit of doubt is given in favour of Sri Y.G.K. Prasad in respect of charge No.4.”

and having said so, the other charges are extracted in the order and it was resolved that punishment of dismissal be imposed on him.

22. A reading of the above resolution indicates that the Person In-charge Committee of the Bank, when it reconsidered the matter afresh after the decision of this Court in W.P.No.4056 of 1996, relied on the findings of the Enquiry Officer in her report dt.25-04-1994 in spite of the fact that this Court has held that the said individual ought not to have conducted the inquiry. This action on the part of respondents is clearly in violation of the said order and of principles of natural justice.

23. In my considered opinion, having regard to the observations made by this Court regarding the competency of the Enquiry Officer to conduct the enquiry in W.P.No.4056 of 1996, the only course open to respondents was to appoint another Enquiry officer and obtain an enquiry report from the said officer. It was not open to respondents to rely on the same enquiry report of the Enquiry Officer, whose appointment as Enquiry Officer, was found invalid by this Court.

24. After obtaining such enquiry report from a new Enquiry Officer, respondents ought to have furnished a copy of the same to petitioner and then asked the petitioner to show cause why the conclusions of the enquiry report cannot be accepted. If this is done, only there would be compliance with the principle laid down by the Supreme Court in **Managing Director, ECIL** (2 supra).

25. Further a reading of impugned resolution does not indicate any reasons for the conclusion of guilt arrived at by the Person In-charge Committee on the charges against petitioner. It is most unfortunate that a punishment of dismissal is imposed by the Person In-charge Committee of the Bank on the petitioner in such a summary manner without giving any reasons there for.

26. In **S.N. Mukherjee Vs. Union of India**, the Supreme Court after considering the various decision of the said Court, held :

“ 34. An important consideration which has weighed with the Court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this Court under Article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded, would enable this Court or the High Courts to

effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons would (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in decision-making. In this regard a distinction has been drawn between ordinary Courts of law and tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the standpoint of policy and expediency.

35. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision, are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.”

27. Coming to the question of punishment, it is no doubt true that this Court had directed the disciplinary authority to consider the issue of punishment afresh. But having regard to the conclusion in W.P.No.4056 of 1996 that the punishment of dismissal was disproportionate to the gravity of the charges, it is

not open to respondents to again impose the same punishment of dismissal on petitioner. Any observation in this regard in the order passed in C.C.No.281 of 2004 cannot be relied upon by respondents for the reason that the scope of Contempt Case was only to decide whether the respondents have committed Contempt of Court by not passing a fresh order as directed by this Court in the said Writ Petition; and the correctness or otherwise of the said order could not have been gone into the said Contempt Case.

28. Learned counsel for respondents contended that impugned order be set aside and matter be remitted back again to respondents to conduct fresh enquiry and passing of fresh orders against petitioner.

29. It is the admitted case of both parties that the petitioner has since retired from service. Once the petitioner has retired from service, there is no question of continuing disciplinary proceedings against petitioner at this point of time after again remitting the matter back to respondents.

30. Therefore, the Writ Petition is allowed; the resolution No.20 dt.23-03-2004 of the Person In-charge Committee of the Bank and also proceedings dt.27-03-2004 of the Managing Director of the Bank are quashed; the respondents are directed to treat the petitioner as if he was in service of the Bank from 07-04-1995 till petitioner's date of retirement with all consequential benefits and also pay him back-wages for the said period with interest @ 9% p.a. till date of payment. The respondents shall also pay costs of Rs.10,000/- (Rupees Ten Thousand only) to the petitioner.

31. As a sequel, miscellaneous petitions pending, if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 18-03-2015

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