

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 712 of 2010

Date : 17-10-2016

Between :

G Khandeswara Rao S/o Venkateswara Rao
Ex.I.D.O./Manager, APCOB
R/o Hanamakonda, Warangal

.... Petitioner

And

The A.P. State Cooperative Bank Ltd
Rep by its Managing Director
Troop Bazar, Hyderabad and others

....Respondents

The Court made the following:



HONOURABLE SRI JUSTICE P. NAVEEN RAO

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ORAL ORDER:

Petitioner challenges the punishment of dismissal from service and recovery of monetary loss caused to the Warangal District Cooperative Central Bank (the respondent bank.)

2. Petitioner was sent on deputation to work as Institutional Development Officer (IDA) and he worked in the said capacity from 21.7.1995 to 21.12.2000. While working in the said capacity he was entrusted the responsibility of processing farmers' loan applications. Alleging illegalities in processing the loan applications and misusing official position, he was served with charge sheet dated 15.1.2003. It contained 9 charges. The serious allegations relate to processing of 363 loan applications involving 363.5 lakhs of rupees. On 21.2.2003, petitioner submitted explanation concerning 51 loan applications and sought further three months time to submit explanation on other loan applications. However, he was granted only one month time. On 10.6.2003 Enquiry Officer (EO) was appointed. Petitioner was granted liberty to submit further explanation to the Enquiry Officer. Enquiry Officer submitted his report dated 31.7.2004 holding charges I to V, VII and IX as proved. On 21.4.2005, show cause notice was issued calling upon petitioner to submit his explanation. On 22.6.2005, petitioner submitted his explanation. On 7.11.2005, further show cause notice was issued on proposed punishment of dismissal and also on proposed financial liability of Rs.211.27 lakhs determined as on 31.8.2005 by reserving right to levy further financial liabilities, if any noticed. On 5.12.2005,

petitioner submitted his explanation. Disregarding the defence of petitioner, punishment of dismissal from service was imposed vide order dated 16.1.2006, in addition to recovery. The appeal preferred against order of dismissal was rejected, the decision of which was communicated vide order dated 28.10.2009. Hence, this writ petition.

3. Heard Sri S Lakshma Reddy, learned senior counsel for petitioner, Sri Rajendra Babu, learned counsel for respondent bank.

4.1. Sri S Lakshma Reddy made following submissions:

i) Charge sheet is vague and devoid of material facts. Unless charges are clear and unambiguous, disciplinary action is not maintainable. He would submit that the vagueness of charges can be seen from the fact that initially allegations leveled against petitioner was on 363 accounts. Ultimately the figure is brought down to 29 cases. Initially, huge liability was fixed but this was also brought down drastically. In fact, no loss is caused to bank; all the loan amounts due to the bank are recovered.

ii) What is alleged, even if proved does not amount to misconduct. There was no allegation of misappropriation. Lapses pointed out are minor and only in few cases of loan applications.

iii) None of the documents relied were supplied and sufficient time to inspect the records was not granted; petitioner needed longer time as the documents were in Branch offices

spread over a long distance and during the enquiry these documents were not produced.

iv) Enquiry was conducted in gross violation of service regulations. It was a perfunctory enquiry. The relevant documents were not supplied. Enquiry Officer acted as prosecutor and Judge.

v) Findings of Enquiry Officer are perverse; not based on legal evidence and there was total non application of mind by Enquiry Officer. There was no discussion on explanation submitted by petitioner. By referring to charge No.1, he would submit that there was no proper discussion or assessment of allegations and defense of petitioner. He would further submit that, no documents were examined; authenticity of documents was not tested; though law requires that documents relied on are required to be supplied, they were not supplied. He would further submit that mere inspection of documents does not amount to compliance of law and petitioner was denied his right to effective defense. He would further submit that documents which were not mentioned or produced during the enquiry cannot be relied on.

vi) The disciplinary authority erred in expressing its final opinion at the stage of furnishing of report of Enquiry Officer and even before explanation was submitted. It would amount to predetermining the issue of guilt, violating procedural safeguards. On this ground also, disciplinary proceedings are liable to be set aside.

vii) The punishment imposed is excessive and disproportionate to the delinquency alleged and proved. Petitioner had rendered long and satisfactory service. He had hardly three years of service to attain the age of superannuation.

viii) None of the officers involved in processing the loan application files were proceeded against; they were not produced during the enquiry. Thus, the action of respondents is arbitrary and discriminatory.

ix) Petitioner was pressurized by superior authorities to process loan applications within a short time. This compelled the petitioner to act against time to deal with many loan applications. Petitioner cannot alone be penalized, having compelled him to act fast. Because of short time, there were some procedural lapses, but they are not fatal. He would further submit that authenticity of documents were required to be verified by PACS and Law Assistant and for their lapses petitioner cannot be penalized.

4.2. In support of his contentions, he placed reliance on following decisions:

Managing Director, ECIL,Hyderabad vS. B.Karunakar¹, Ministry of Finance and another Vs. S.B.Ramesh², Kuldeep Singh Vs. Commissioner of Police and others³, State of Uttaranchal and others Vs Kharak Singh⁴, Roop Singh Negi Vs.

¹ AIR 1994 SC 1074

² (1998) 3 SCC 227

³ (1999) 2 SCC 10

⁴ (2008) 8 SCC 236

**Punjab National Bank and others⁵ and State of Uttar Pradesh
and others Vs. Saroj Kumar Sinha⁶**

4.3. Though one of the contentions urged is order of appellate authority is not a speaking order and is liable to be set aside on that ground, learned senior counsel fairly submitted that petitioner is not pressing the said contention and matter be considered on merits.

5. Sri A.Rajendra Babu, made following submissions.

i) Petitioner was given due opportunity to inspect all the documents and he has inspected the documents. Procedural formalities were strictly observed. By referring to representation of petitioner dated 21.2.2003 received by respondent No.1 on 25.2.2003, he would submit that no objection was raised on not affording due opportunity to inspect the documents. By referring to explanation of petitioner dated 22.6.2005 he would submit that no contention was raised on not furnishing of relevant records, violation of principles of natural justice and reasonable opportunity. It is only an afterthought that such contention was raised.

ii) He denied the allegation that Enquiry Officer was acting as prosecutor and Judge. He would submit that Bank was represented by the Presenting Officer and averments in final explanation of petitioner would show that documents were produced during the course of enquiry by Presenting Officer.

⁵ (2009) 2 SCC 570

⁶ (2010)2 SCC 772

iii) He would submit that it is not a case of no evidence as sought to be contended by senior counsel. The allegations leveled against petitioner are substantiated by material on record.

iv) In domestic enquiry, the charge can be established based on the principle of preponderance of probability and strict rules of evidence as applicable in criminal proceedings are not attracted. The material on record clearly point out grave illegalities committed by petitioner in processing the loan applications resulting in huge loss of public funds and misuse of his official position.

v) He would submit that no justification was shown in not adhering to procedures. The urgency and requirement to process large number of loan applications within a short time is no ground to ignore the procedural guidelines.

vi) By extensively referring to report of Enquiry Officer he would submit that Enquiry Officer observed procedural formalities while conducting enquiry; petitioner was afforded due opportunity at every stage; There was thorough analysis of material on record, before recording his findings.

vii) He would submit that charges are specific and contain full details; statement of imputation was furnished.

viii) In the show cause notice enclosing copy of report of Enquiry Officer, disciplinary authority only called upon petitioner to explain as to why punishment cannot be

imposed. It does not amount to pre-judging the issue or coming to conclusion in imposing major punishment.

ix) He would submit that there was no discrimination in taking disciplinary action against petitioner. He would submit that allegations leveled against petitioner were with reference to his responsibility as field officer in examining the relevant documents while processing the loan applications and are not general in nature. Thus, there can not be a comparison with other officers. Due to improper processing of loan applications, there were defects in title to the properties pledged as security by loanees causing huge difficulty in effecting recovery of loans advanced.

x) He would assert that there were no procedural illegalities and irregularities. There was full statutory compliance before petitioner was dismissed from service. He further submitted that mere violation of procedural safeguards, *per se*, do not vitiate disciplinary proceedings. Petitioner has to plead and establish prejudice caused to him. Petitioner has neither pleaded nor established prejudice caused to him.

xi) Petitioner being Field Officer, it is his primary responsibility to assess the genuineness of claim keeping in mind the interests of the bank. Bank can recover the loans advanced only if proper security is obtained. Because of illegalities committed by petitioner loan accounts became sticky causing lot of hardship to bank to recoup the amounts advanced.

6. Charges are clear and specific. There is no ambiguity in the allegations leveled. Merely because the loan accounts where allegations are noticed are brought down drastically and amount of loss caused is also brought down drastically cannot be a ground to hold the charges as vague. At the state of issuance of charge memo, what is alleged is only a prima facie view of the disciplinary authority based on the inputs available with him. Even if certain aspects are not covered at that stage, it is permissible to supplement later. The purpose of enquiry into those allegations is to find out truth. Ultimate disciplinary action depends upon the findings arrived at by the Enquiry Officer on conducting detailed enquiry and accepted by the Disciplinary Authority.

7. Record of enquiry was produced. The record of enquiry would disclose that management representative presented Branch-wise loan applications in the presence of the petitioner. Petitioner has verified the records and furnished case-wise deposition. Management representative has produced loan files where basic valuations were not adopted as per book value register of Sub Registrar of Assurances. The enquiry record also discloses that with reference to valuation of properties, the Enquiry Officer visited the concerned offices of the Sub Registrars in the presence of petitioner to verify basic value recorded.

8. The enquiry record discloses that on each of the enquiry sittings, after perusing the relevant loan applications/loan files, petitioner offered his defense. The same was recorded and on scrutiny of relevant records and considering the defense, the Enquiry Officer recorded his observations. Record also discloses

that wherever necessary to elicit information, Enquiry Officer asked the petitioner questions and recorded the questions asked and reply furnished. Some times petitioner was cross examined by Management Representative. On all the pages of recording of depositions and observations signatures of petitioner is found.

9. Record contains deposition of petitioner recorded on 16.4.2004. In this deposition also no objection was raised regarding the manner in which loan files/ loan applications were placed during the enquiry and difficulties experienced by him in scrutinizing the record. On the contrary deposition was made on merits.

10. At this stage, it may be appropriate to extract few of the entries in the enquiry record. They read as under:

i) Proceedings of enquiry dated 27.11.2003:

The Management representative presented the following LAs before the enquiry officer.

.....

Sri G. Khandeshwar Rao JO/IDO (US) /CE has furnished his deposition case wise.

ii) Proceedings of enquiry dated 24.12.2003:

The Management representative have presented the following loan files as evidence.

.....

Sri G. Khandeshwar Rao JO/IDO (US) /CE after verification of records has given his deposition case wise.

iii) Proceedings of enquiry dated 7.1.2004:

The enquiry is taken up on 7.1.2004 at 10.00 AM. The following have attended the enquiry.

1. Sri P Laxmikantham- Enquiry Officer /DGM
2. Sri G Balaiiah MR/JO
3. Sri Sri G. Khandeshwar Rao JO/IDO (US) /CE

The Management representative have presented the following loan files as recorded evidence in which Basic

Valuations are not adopted as per Basic Value Registers of Sub Registrar of Assurances.

iv) Proceedings of enquiry dated 12.7.2004:

The enquiry is taken up on 12.7.2004 at 10.00 AM. The following have attended the enquiry.

1. Sri P Laxmikantham- Enquiry Officer /DGM
2. Sri G Balaiah Management Representative/JO
3. Sri Sri G. Khandeshwar Rao JO/IDO (US) /CE

The Management representative have presented the following loan files for verification of valuation adopted by Sri G Khandeshwar Rao CE and to trace out the title.

.....

The files are verified by the Enquiry Officer along with the Management Representative and charged employee.

v) Proceedings of enquiry dated 13.7.2004:

The enquiry is taken up on 13.7.2004 at 10.00 AM. The following have attended the enquiry.

1. Sri P Laxmikantham- Enquiry Officer /DGM
2. Sri G Balaiah JO/ Management Representative
3. Sri Sri G. Khandeshwar Rao JO/IDO (US) /CE

.....

The charged employee Sri G Khandeshwar Rao has given his deposition and he is cross examined.

Since the charged employee and the Management representative did not wish to lead any further evidence the enquiry is concluded today i.e.13.7.2004.

11. On going through the record, I do not see any error in conducting the enquiry. There is full compliance of procedural formalities. Petitioner was afforded due opportunity. Record was produced in his presence. He was allowed to go through the record and to make his submissions. His submissions were recorded.

12. The sustainability of any financial institution depends on proper lending mechanism. Primary safeguard required before advancing loan to a person is ascertaining his repaying capacity, the viability of project for which loan is sought and most important

component is whether loan is properly secured. Thus, verification of the security offered is very crucial. The substance of the allegations against petitioner is there was defect in the title to the properties offered for security, such as lack of clarity on boundaries, possession etc and value of the property offered for security, thus compromising the interest of the Bank and bank had experienced lot of difficulty in recovering the loans advanced due to these lapses. As field Officer, it is his primary responsibility to thoroughly verify the relevant revenue records/valuation records before recommending for sanction of loan. As report of Enquiry Officer and disciplinary records would disclose, petitioner failed in discharging his primary responsibilities. Petitioner cannot shift blame to other employees to cover up his deficiencies. If there was any doubt, he ought to have sought for clarification from concerned employees. Whether bank actually exposed to loss; that ultimately the loan amounts taken were recovered is not relevant. The crucial issue is whether Bank's financial interests were compromised by improper scrutiny of documents. Exposing the bank to risk is sufficient. Merely because there is no allegation of misappropriation, cannot undermine the gravity of the charge.

13. Petitioner seeks to take shelter on the ground that he did not have prior experience in dealing with such matters and therefore procedural lapses cannot be viewed seriously. There was never a protest contending that he should not be posted as IDO/FO and continued. The further excuse advanced was that there was very short time given to him to clear large number of loan applications and due to pressure of time and mandate of superior authorities, he had no time to do detailed exercise.

Petitioner's primary allegiance is to his employer and it is his bounden duty to protect the interests of his employer. No superior officer could have instructed him to deviate the procedures envisaged by the Bank before recommending an application to grant loan. Even if such instructions were issued by his superiors, they are not binding on him. Therefore, these defenses do not come to the rescue of petitioner.

14.1. Learned senior counsel laid great emphasis on disciplinary authority indicating punishment in the show cause notice enclosing report of the Enquiry Officer.

14.2. There is no merit in the said contention. The Disciplinary Authority after extracting the charges and findings of the Enquiry Officer, indicated to petitioner that he has accepted the findings of the Enquiry Officer and called upon the petitioner to show cause why irregularities committed by him should not be treated as grave misconduct and why appropriate punishment should not be imposed. By this notice, petitioner was only called upon to submit his explanation on the prima facie opinion of the Disciplinary Authority. He was only bringing to the notice of petitioner, the findings recorded by the Enquiry Officer and desired response from the petitioner. This does not amount to expression of final opinion. It cannot be said that the contents of the show cause notice dated 21.4.2005 amounted to prejudging the issue and that mind was closed by Disciplinary Authority.

15. At this stage, it is appropriate to note the decisions cited at the Bar.

15.1. In **B. Karunakar** while emphasizing on the relevancy and supply report of Enquiry Officer, Supreme Court held, the employee's reply to the Enquiry Officer's report and consideration of such reply by the Disciplinary Authority also constitute an integral part of such enquiry.

15.2. In **S.B.Ramesh**, allegation against respondent was that he has contacted second marriage while his first wife was alive and marriage was not dissolved and that he was living with another lady and had children by her. Disciplinary action resulted in imposing punishment of compulsory retirement. Tribunal found fault with the manner in which disciplinary proceedings were conducted. Supreme Court upheld the finding recorded by the Tribunal. However, Supreme Court rejected the finding of the Tribunal on the issue of the employee living with another person would not per-se amount to misconduct.

15.3. In **Kuldeep Singh**, Supreme Court found fault in the manner in which enquiry was conducted. Blaming the appellant for non-production of complainants without any material on record was held to be a perverse finding. Supreme Court also held illegal to bring on record previous statement of complainants, when recording such statements was highly suspicious and when those persons were not produced as witnesses.

15.4. In **Kharak Singh**, respondent was dismissed on the allegation of involvement in illegal felling of trees in the forest. In paragraph 15, Supreme Court summed up principles on conduct of domestic enquiry. Senior counsel led emphasis on principle (iii), paras 17 and 20. On analyzing the facts of the case, Supreme held

Enquiry Officer himself has acted as the investigator, prosecutor and Judge (paragraph 17). It further held delinquent was not supplied required documents, witnesses were not examined in his presence and report of Enquiry Officer was not furnished (paragraph 20). Principle (iii) reads as under.

“15 (iii) In an enquiry, the employer/ department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.”

15.5. In **Roop Singh Negi**, Supreme Court found fault in relying on purported confession made before police in the domestic enquiry. Supreme Court held as under:

“15.....The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof. ”

15.6. In **Saroj Kumar Sinha**, Supreme Court noticed that respondent was denied access to documents sought to be relied against him; he was not heard; no date for enquiry was fixed; and not a single witness was examined in support of the charges leveled. Supreme Court held, non-disclosure of documents having a potential to cause prejudice to a government servant in the enquiry proceedings would clearly be denial of a reasonable opportunity. Supreme Court held:

“29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.”

16. In the case on hand all the above principles were observed by the respondent employer. Report of the Enquiry Officer was supplied to petitioner and his explanation was called. After he submitted his explanation, second show cause notice was issued calling upon petitioner to submit his explanation on the punishment proposed. All the documents were made available to petitioner; he had examined them and made his submissions after looking into the records; no witness was examined behind his

back. There was no procedural violation in conducting disciplinary action.

17. It cannot be said that the findings recorded in domestic enquiry are not based on material on record and they cannot be characterized as perverse. I do not see any illegality in the manner in which disciplinary action was conducted resulting in imposing the punishment of dismissal. This Court cannot sit in appeal, re-appraise the evidence on record and come to a different conclusion. Once charges are held proved, what punishment can be imposed is within the exclusive domain of disciplinary authority. The jurisdiction of writ Court to interfere on the question of punishment is only when the punishment imposed shocks the conscience of the Court. In the facts of this case and based on the allegations leveled and proved, it cannot be said that punishment imposed is excessive and disproportionate warranting interference by this Court.

18. Accordingly, the writ petition is dismissed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

DATE: 17-10-2016
TVK

P.NAVEEN RAO,J

HONOURABLE SRI JUSTICE P. NAVEEN RAO



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