

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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WRIT PETITION No.316 of 2010

Between:

Laxmi Kamesh Gorthi

....Petitioner

and

Bank of India,
Represented by its Chairman & Managing Director,
Bank of India, Head Office, "Star House", C-5, G-Block,
Bandra Kurla Complex, Bandra (east),
Mumbai 400 051,
and others.

....Respondents

JUDGMENT PRONOUNCED ON : 02.03.2016

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : No
Marked to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to : No
see the fair copy of the Judgment?

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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WRIT PETITION No.316 of 2010

ORDER:

The petitioner was appointed as an Agricultural Assistant on 05.12.1984. Thereafter, he was promoted as an Officer Junior Management Scale-I on 26.06.1995. As an Agricultural Assistant he worked in Madhya Pradesh and as Officer he worked in Orissa. Then he was shifted to Andhra Pradesh and he worked in various capacities. He was placed under suspension by order dated 25.06.2005 by the Zonal

Manager, Zonal Office, Visakhapatnam, alleging certain irregularities while he was working as the Manager at Amadalavalasa Branch. The articles of charge were communicated on 04.02.2006. The petitioner submitted his explanation on 28.02.2006 denying the charges. In view of denial of charges, an enquiry was conducted and the Enquiry Officer submitted his report on 21.04.2006. It was held that all the charges against the petitioner were proved. The petitioner was compulsorily retired from service by order dated 31.07.2006. Against the said order, the petitioner preferred an appeal to the Appellate Authority on 18.08.2006 and the said appeal was rejected by proceedings dated 08.09.2006. The petitioner also states that, in connection with the said irregularities, Crime No.Rc.06(A)/2006-CBI/VSP was registered on 31.03.2006 and the investigation was pending. The present Writ Petition was filed challenging the imposition of punishment by order dated 31.07.2006 as confirmed by the Appellate Authority on 08.09.2006.

Learned Counsel for the petitioner submits that the departmental enquiry was not conducted as per the Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976, and Bank of India Officer Employees' (Conduct) Regulations, 1976. He further submits that the order imposing punishment as well as the order confirming the same were not speaking orders and no documents were produced as sought for by the petitioner when the enquiry was going on and hence, the enquiry was vitiated.

Learned Standing Counsel for the respondents submits that the enquiry was conducted as per the rules and in fact, pursuant to the registration of crime, the petitioner was convicted in C.C.No.15 of 2008 by the learned I Additional Special Judge for CBI Cases, Visakhapatnam, in respect of the same irregularities.

A perusal of the enquiry report indicates that six charges were framed against the petitioner and the Enquiry Officer submitted his report

stating that all charges mentioned in the charge sheet are conclusively and clearly proved beyond doubt. The Chief Manager and Disciplinary Authority passed an order on 31.07.2006 imposing the punishment of compulsory retirement from Bank's service after considering the representation submitted by the petitioner in a detailed manner while agreeing with the findings recorded by the Enquiry Officer. The conclusive portion of the order of the Disciplinary Authority reads as follows:

"I, therefore, do not find any merit in your submissions in respect of any of the charges. In view of the above, I concur with the findings dated 21.04.2006 arrived at by the Inquiring Authority and while doing so I hold you guilty of the charges leveled against you vide the charge sheet referred to hereinabove.

Having regard to the gravity of the charges leveled and proved against you, I am of the considered opinion that ends of justice would be met by inflicting on you the following penalties for each proven charge;

Articles of Charge	Whether proved	Penalty imposed
I	Yes	Compulsory Retirement
II	Yes	Lowering of Basic pay by 3 stages for a period of 3 years with cumulative effect
III	Yes	Censure in terms of clause 4(a) of OSR D&A 1976
IV	Yes	Lowering of Basic pay by 3 stages for a period of 3 years with cumulative effect
V	Yes	Compulsory Retirement
VI	Yes	Bringing down basic pay by 5 stages for a period of 3 years in terms of Clause 4(f) of OSR D&A, 1976.

Even though separate penalties have been spelt out hereinabove for each proven charge, I have decided to impose upon you the consolidated penalty of **Compulsory Retirement**. Accordingly, I order as under:

"That the consolidated penalty of 'Compulsory Retirement' from Bank's service, in terms of Regulation 4(h) of the Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976 is be and hereby inflicted upon you with immediate effect for the charges leveled against

you vide the Charge Sheet dated 04.02.2006 and found proved against you.”

Pending disciplinary proceedings, you were placed under suspension w.e.f.03.07.2005 vide order VZO;IR;161 dated 25.06.2005 of the undersigned. I have, therefore, also gone into the aspect of adequacy or otherwise of the subsistence allowance paid/to be paid to you till the date of this Penalty Order and consider the same to be adequate. Hence, I further order that no amount, over above the subsistence allowance that has been paid/to be paid to you till the date of this Order, shall be payable to you.”

The petitioner submitted an appeal raising objections to the enquiry report as well as to the imposition of punishment to the Appellate Authority and the Appellate Authority thoroughly considered his case by examining individual charges and also the objections raised by the petitioner. The Appellate Authority also noticed the request of the appellant to reduce punishment as he had put in 21 years of service and he is the sole breadwinner of the family. The order of the Appellate Authority reads as follows:

“I have carefully gone through the Charge sheet issued to appellant, the day to day minutes of the enquiry, evidence gathered during the course of enquiry, the findings of enquiry officer dated 21.04.2006, submissions made by the Appellant in response to findings of IO and penalty order dated 31.07.2006 and also the appeal dated 18.08.2006 of Appellant. I observe that the enquiry officer had conducted the departmental enquiry as per the provisions contained in BOI Officer Employees’ (Discipline & Appeal) Regulations, 1976 and by upholding principles of natural justice. All the evidences in support of charge were adduced in the enquiry in presence of Appellant and his defence representative. The Appellant is also actively participated in the enquiry along with Defence Representative of his choice. The findings arrived at by Inquiry Officer are also found to be judicious and based entirely on the relevant evidences brought on record during the course of departmental enquiry. As to the submission contained in the appeal dated 18.08.2006 of the Appellant, my observations are as under:

Enquiry records reveal that after the appellant denied the charges leveled against him, the EO permitted the Appellant to be represented in the enquiry by a Trade Union Leader of his choice and accordingly, Sri P.R.Siva Prasad, E.C.Member of BOI Officers Association, A.P.Unit had appeared as defense

representative in his case. The Presenting Officer produced the Management Witnesses in the enquiry. The said witnesses were categorical in deposing that they were never compelled, coerced or were threatened during the investigation. During the course of cross examination, the defence could not produce the testimony of witnesses. It was for the Appellant/his defence representative to prove his innocence in the enquiry, which they failed to do so despite availing all reasonable opportunities. The Appellant having appointed a representative to defend him in the enquiry, he must have made all his submissions through the said representation and if the Appellant is denied of opportunity as claimed & as stated by him in his appeal, the same may be on account of his own choice. Records do not reveal that Appellant was denied of any opportunity and wanted to state something and they were not given due cognizance. Further ignorance of rules and procedure of Bank cannot be taken as the excuse. The basic act of Appellant i.e., financing to a bogus firm, accommodating with cheque purchases and thereafter fraudulently squaring off cheque purchase amount by debiting SBI Account, financing fraudulent Housing Loans, Educational Loans, SRTA Loan to relatives of Sri Y.B.S.Reddy, promoter of Sri Marketing Associates (bogus firm) and also finance to borrowers related to staff with a plea to improve agricultural finance cannot be said to have been done due to ignorance. Because of his acts, the Bank had been put to an irreparable loss of Rs.52.00 lacs. Thus, the appellant had caused immense damage to Bank by his acts.

In view of what is stated hereinabove, I am of the view that the contention raised by Appellant in his above referred appeal are without any substance and as such they do not call for any cognizance. As regards quantum of punishment imposed upon the appellant by the D.A. I hold the same as justified and commensurate with gravity of the charges leveled and found proved against him. Added above, the past service record of Sri Kamesh also not unblemished and he was awarded with a penalty of withholding of 3 increments of pay with cumulative effect vide order of penalty VZO:IR:DA:157 dated 26.06.2005. There are also no mitigating and extraneous factors in his case warranting/taking a lenient view in the matter and reduction in the quantum of punishment.

I am, therefore, of the considered opinion that ends of justice would be met by confirming the punishment that was imposed upon by Disciplinary Authority, I order as under:

“That the punishment of Compulsory Retirement from Bank’s service that was imposed upon the Appellant by D.A. vide punishment order No.VZO:IR:138 dated 31.07.2006 is be and hereby confirmed upon the Appellant. Consequently, the appeal dated 18.08.2006 of Appellant fails.””

In the light of the above orders of the Disciplinary Authority and the Appellate Authority, it cannot be said that those orders are non-reasoned orders. The Disciplinary Authority as well as the Appellate Authority gave enough opportunity to the petitioner and after considering his case, they agreed with the findings recorded by the Enquiry Officer. In view of the concurrent findings of fact and also in the light of the findings recorded by the Enquiry Officer, this Court sees no reason to interfere with the orders passed by the Disciplinary Authority and the Appellate Authority.

The Writ Petition is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

02.03.2016
vs