

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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WRIT PETITION No.20692 OF 2003

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed challenging the order passed by the respondent imposing penalty of dismissal from service after conducting regular departmental inquiry finding him guilty for grave misconduct of the petitioner, more particularly, the financial irregularity in discharging his duties as Deputy Manager of the Indian Overseas Bank, Kothagudem Branch.

02. It is the case of the petitioner that he was appointed on 15.01.1979 as a Clerk under the control of the respondent-Bank and later promoted as Deputy Manager in the year 1988. While he was working as Assistant Manager at Kothagudem Branch, he allegedly committed certain financial irregularities and initiated disciplinary proceedings against him and later issued an order of suspension dated 11.02.1990. After lapse of five months from the date of passing suspension order, the charge sheet dated 16.04.1991 was served on the petitioner complaining certain financial irregularities and ultimately he was found guilty after conducting regular departmental enquiry.

03. The only ground on which the order was challenged before this Court is that the respondent passed the order in violation of principles of natural justice and no opportunity was given to the petitioner to cross-examine the witnesses and to adduce evidence before the inquiry officer, therefore, the order under challenge is illegal and arbitrary, and prayed to set aside the same reinstating the petitioner with all consequential benefits.

04. The respondent filed counter denying the material allegations while admitting initiation of departmental proceedings and ordering departmental inquiry after following necessary

procedure, and denied the specific allegations, failure to follow the principles of natural justice and passing the impugned order without affording an opportunity to cross-examine the witnesses etc.

05. At paragraph 15 of the counter affidavit, the respondent specifically asserted that when he was asked to admit or deny the charges, he admitted Charges 2A, 2B, 2C, while denying charges 1 and 3 regarding financial irregularities at Kothagudem Branch. He also further committed financial irregularities while working in Singareni Extension Counter and framed different charges, which are admitted by the petitioner. Similarly, while working at Mahabubnagar Branch, he committed certain irregularities and framed three charges and they were admitted by the petitioner in clear and unequivocal terms.

06. During inquiry, the petitioner appeared in person on 01.12.1992, and he participated in regular departmental inquiry on 19.1.1993 and 20.01.1993 in person without obtaining assistance of any defence representative, cross-examined all the three witnesses, who were examined by the Management, confronting 36 documents during cross-examination. Therefore, the allegation that no opportunity was afforded to the petitioner to cross-examine the witnesses and passing an order in violation of principles of natural justice was denied and prayed to dismiss the writ petition.

07. During hearing, learned counsel for the petitioner reiterated the contentions that he was not afforded any opportunity to cross-examine the witnesses and the order passed by the respondent is in violation of principles of natural justice.

08. Whereas Sri E. Madanmohan Rao, learned counsel for the respondent, drawn the attention of this Court to the dates on which the petitioner appeared and cross-examined the witnesses.

09. Considering rival contentions, the point that arise for consideration is,

“Whether a reasonable opportunity was afforded to the

petitioner to cross-examine the witnesses during inquiry before the officer? If not, does it amounts to violation of principles of natural justice?”

POINT:

10. Learned counsel for the respondent, during hearing, passed on the statements recorded by the inquiry officer and the witnesses examined on behalf of the Management were cross-examined by the writ petitioner himself putting four questions to the witnesses and again re-examined explaining the ambiguities. Similarly, M.Ws.2 and 3 were also cross-examined by the writ petitioner himself at length. Therefore, the allegation that the petitioner was not afforded reasonable opportunity to cross-examine the witnesses is a patent lie and there is no substance in this contention.

11. The other contention is that the respondent did not follow the principles of natural justice, when inquiry officer afforded reasonable opportunity to the petitioner, nothing more than such opportunity is required to be afforded and he did not complain the same before the inquiry officer disciplinary authority or before the appellate authority.

12. Learned counsel for the respondent in support of his contention placed reliance on the Judgment of the Apex Court in **C.L. SUBRAMANIAM V. THE COLLECTOR OF CUSTOMS, COCHIN**^[1], to contend that when any specific rule is contravened by the inquiry officer, punishment imposed against the delinquent employee can be set aside. He drawn attention of this court to para 23 of the judgment, where the Apex Court held that when the inquiry was held in contravention of Rule 15 (5) of the Central Civil Services Classification, Control and Appeal Rules, which is mandatory in nature while conducting inquiry. Therefore, for violation of such Rule, the inquiry report was set aside. But the principle laid down in the above Judgment has no application to the

present facts of the case, since the petitioner availed opportunity at every stage.

13. A perusal of the order of the inquiry officer, it is clear that the petitioner cross-examined the witnesses availing opportunity afforded to him at all stages and ultimately he was found guilty for the financial irregularities which are complained against him. Even in the order passed by the respondent in the appeal dated 21.06.2003, the appellate authority observed that the petitioner availed opportunity at every stage during inquiry and declined to interfere with the order violating the principles of natural justice in passing the order.

14. Curiously, in this matter, the appellate authority alone was impleaded as a party to the writ petition. In the absence of disciplinary authority, the findings recorded by the disciplinary authority cannot found fault and no finding can be recorded reverting the findings recorded by the inquiry officer. At best, the order passed by the appellate authority can be examined, whether he followed the procedure or not? In fact, it is not his grievance, at any stage, in the entire affidavit, that the respondent did not afford reasonable opportunity to defend himself. Therefore, I find no illegality in the order passed by the respondent herein in the appeal dated 21.06.2003 warranting interference of this Court. Hence, the order passed either by the disciplinary authority or the appellate authority does not suffer from any illegality, warranting interference of this Court. Accordingly, point is answered against the petitioner.

15. In the result, the writ petition is dismissed, but in the circumstances without costs.

16. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 02.08.2016

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[\[1\]](#) (1972) 3 SCC 542