

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.01.2017

C O R A M

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Writ Petition No.5842 of 2003

S.Thiagarajan

...Petitioner

Vs.

1. The Appellate Authority cum
The Chief General Manager,
State Bank of Travancore,
Head Office,
Thiruvananthapuram - 695 012.

2. The Disciplinary Authority cum
The General Manager (Operations),
State Bank of Travancore,
Head Office,
Thiruvananthapuram - 695 012.

...Respondents

Prayer : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari or any other appropriate writ or direction to call for the records on the file of the 1st respondent, PAD/8/620/35 and dated 9.10.2002 in confirming the order of the Disciplinary Authority, the 2nd respondent in DPD/620/1170 and dated 14th May 2001 imposing the punishment of dismissal from service on this petitioner and quash the proceedings therein as illegal, incompetent, irregular and unconstitutional and further direct the 1st respondent to reinstate the petitioner in service together with back wages and all attendant benefits and pass such further or other orders and thereby render justice.

For Petitioner

: Mr.V.Lakshminarayanan

For Respondents

: Mr.S.Jayaraman

O R D E R

Heard.

2. The petitioner before this Court is a dismissed Branch Manager of the State Bank of Travancore, which is a Nationalised bank. For reasons best known, the petitioner did not make the bank which is a body corporate as a party to the writ petition as that body corporate alone could have been sued or be sued. That body alone could have granted any relief to the petitioner in case this court decides in his favour. However, in this case, only the disciplinary authority and the appellate authority constituted under the State Bank of Travancore (Officers) Service Regulations, 1979 have been made parties. On this score alone the writ petition could have been dismissed. However, this Court do not want to stand on technicalities.

3. The petitioner was working as a Branch Manager at the Ponnapuram branch (Tiruppur) from 22.7.96 to 27.8.97. Just before his posting came to an end in that branch, he was given a memo dated 24.6.97 by the Asst.General Manager R-II, Zonal Office at Chennai relating to certain serious lapses on his part in the conduct and follow up of credit facilities to M/s.Prithvi Exports. The petitioner gave the reply dated 31.7.97. Thereafter, he was shifted to Bangalore branch. At that place, the petitioner was given a charge memo dated 21.2.98 by the 2nd Respondent, who was his disciplinary authority. It was stated by him that he gave his reply on 15.6.98.

4. The 2nd Respondent by a memo dated 28.7.98, ordered for an enquiry into the charges in terms of State Bank of Travancore (Officers) Service Regulations, 1979. A Chief Manager at Thiruvananthapuram branch was appointed as the enquiring authority and another officer was appointed as a presenting officer. The Petitioner was informed that he can avail the assistance of an officer. He was also informed that he should get the consent from his defence representative and they must obtain prior sanction from the controlling authority for giving leave to that officer. Initially the petitioner requested the assistance of one S.V.Subramanian, AGM-Marketing as his defence representative. But however, he was told by the 2nd Respondent that due to some official exigencies, permission to S.V.Subramanian cannot be conceded. Thereafter, the petitioner took the assistance of another officer by name K.S.Prasad, who helped the petitioner to conduct the domestic enquiry.

5. The enquiry was held at Thiruvananthapuram and only on behalf of the bank, evidence was let in. Two witnesses were

examined and 30 documents were filed. On the side of the petitioner, one P.M.Ganapathy, Chief Manager was examined as DW1. The enquiry was conducted on 28.1.99 and 29.1.99. In that enquiry, the enquiry officer after the conclusion of enquiry submitted his report dated 6.5.1999. He found that out of the nine charges levelled against the petitioner, five charges were fully proved, two charges partly proved and in respect of charge no.6, excepting for one sub-charge other charges were proved. He held that charge no. 4 alone was not proved.

6. A copy of the enquiry report was sent to the petitioner and his further reply dated 28.7.1999 was received. Thereafter, the 2nd Respondent by his order dated 14.5.2001 held as follows:-

"On a careful consideration of the various aspects of the case and after independent application, I concur with the findings of the Inquiring Authority and find the explanations of the CSO as unacceptable. The records of the case reveal that the CSO has committed the following serious irregularities in the conduct of credit facilities and extended financial accommodation in gross negligence to M/s.Prithvi Exports.

a.Whereas the sanction stipulated negotiation of bills drawn by M/s.Prithvi Exports the CSO negotiated bills drawn by another party, viz., M/s.Cathy International under an LC opened in favour of third party, viz., M/s. Star Collections for which he had no authority and credited the proceeds to the account of M/s.Prithvi Exports.

b. The CSO failed to conduct periodical unit inspections. He did not obtain stock statements nor ensured that the drawings from the loan account were fully covered by stock. Drawings in the PC account were allowed even against goods already exported.

c. The CSO abused the discretionary powers vested in him on a number of occasions and permitted excess drawings / negotiated bills beyond his powers exposing the Bank to serious risks and huge losses. He also failed to report the irregularity to his Controller.

d. Even though the assessed annual turnover of the unit was only Rs.500 lakhs and the unit had sanctioned PC limit of Rs.50 lakhs, the CSO negotiated bills in the account of the unit for amount aggregating Rs.429.31 lakhs within a short period of 40 days. The unit could not have manufactured goods worth this much amount within the short period. He negotiated bills having discrepancies in dates in relation to 'on board', 'Insurance' etc.

e. The CSO negotiated bills drawn under FLCs opened by non-first class banks without seeking prior clearance from his Controller.

f. Fully aware of the fact that the unit was in financial difficulties the CSO released nine months after the date of sanction a term loan of Rs.3 lakhs without reference to the sanctioning authority.

7. Thereafter he held that petitioner's conduct would have caused the bank an approximate loss of Rs.2.5 crores. His dereliction of duty and irresponsible act was detrimental to the institution and he deserves severe penalty. Therefore he was imposed with the penalty of dismissal and accordingly the said penalty was imposed by the very same order.

8. The petitioner filed an appeal to the 1st Respondent, who is the Appellate Authority under the Regulations, vide his Appeal Memo dated 13.6.2001. Though a grievance is now projected before this Court that he was not given a personal hearing by the appellate authority, in his appeal memo he did not seek for any personal hearing.

9. The 1st Respondent being the appellate authority nearly after a period of one year and four months passed an order dated 9.10.2002 and dismissed the appeal filed by the petitioner. The 1st Respondent being an appellate authority did not give any reasons and only wrote few lines for rejecting the appeal. The operative portion of the order read as follows:-

"I have perused the entire records connected with the case, considered the various grounds raised in the appeal by Shri Thyagarajan and after independent application concur with the findings of the DA regarding the charges alleged. The various grounds raised by Shri Thyagarajan were already considered by the DA while arriving at his conclusions. The officer's statement that he had conducted the account as per the bank's instructions alone will not justify serious omissions / commissions observed on his part while opening LCs and conducting the limits sanctioned to the exporter. However considering the fact that the various grounds raised by the officer in his appeal are unsupported by evidence and most of such grounds were already considered by the Disciplinary Authority at the time of deciding the case I do not find any reason to interfere with the decision of the Disciplinary Authority and, therefore, decide to maintain status quo vis-à-vis the order of the Disciplinary

Authority. I order accordingly. In the result, the ex-officer's Appeal is disallowed and the Disciplinary Authority's order remains unchanged."

10. As against the order of dismissal as well as the appellate authority's order, the petitioner had preferred the above writ petition. The W.P. was admitted on 24.4.2003 and notice was ordered to the respondents. The respondents have entered appearance and had filed a common counter affidavit dated NIL, December 2009. Even at the time of filing of the writ petition, the petitioner was 56 years old and had only four years to complete the service, but for the dismissal.

11. The contention raised by the petitioner against the order of the dismissal as well as the appellate authority's order were manifold. The petitioner initially contended that the denial of permission to engage S.V.Subramanian as defence representative would amount to denial of reasonable opportunity. The 1st Respondent had clearly stated that due to exigencies of service, the services of subramanian cannot be spared and that he could engage another officer by name K.S.Prasad to defend him in the enquiry. First of all, the matter of engagement of a defence representative is governed by the regulations and it clearly states that prior permission of competent authority is essential to relieve any officer to go and act as a defence representative. In this case, the officer chosen by the petitioner could not be relieved due to exigencies of service and it cannot be found fault with in the absence of any malafides. Even otherwise, the petitioner had utilised the services of another manager to assist him in the enquiry and therefore, at this point of time no grievance can be projected.

12. In the affidavit filed in support of the writ petition, several grounds were raised on the merits / demerits of charges and as to how neither the enquiring authority nor the disciplinary authority (R2) never dealt with the same. It was also argued that the petitioner had discretion to deal with the matters and he had to only exercise discretion on the basis of common practices adopted in Tiruppur area. He also stated that the institutions dealt with by him were all reputed institutions. The main charge against the petitioner was that the outstandings were far and excess of the limits sanctioned to the unit.

13. The learned counsel for the petitioner placed reliance upon the judgment of this Court in P.Damodaran Vs. The Chairman, Tamil Nadu Cements, LLA & anr. reported in 1994 -2 -LW-257 for contending that principles of natural justice also requires recording of reasons in exercise of power by administrative

authorities. In that case, this Court relied upon the judgment of the Supreme Court in S.N.Mukherjee Vs. Union of India (AIR 1990 SC 1984).

14. Reliance was also placed upon the judgment of the Supreme Court in Roopsingh Negi Vs. Punjab National Bank & Ors. reported in 2009 (2) SCC 570 for contending that mere production of documents is not enough to prove the charges in an enquiry. Documentary evidence has to be proved by examining witnesses. It was further stated that in that judgment, the Supreme Court had laid down as to how an enquiry officer should render his findings. The following passage found in the judgment may be quoted:-

"Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof."

There is no quarrel with the proposition of law laid down by the Supreme Court.

15. However, in view of the view to be taken in this case, it is unnecessary to deal with the explanation offered by the petitioner to the charges and also to find out whether those charges have been proved by legal evidence. The petitioner had also attacked independently the order passed by the appellate authority and submitted that the same was not only contrary to the regulations, but also in violation of the various orders passed by the Supreme Court.

16. Taking this submission, it is necessary to refer to the Regulation 70(2) dealing with the power of the appellate authority in the bank. The relevant portion of the regulation reads as follows:-

"The Appellate Authority shall consider whether the findings are justified and / or whether the penalty is excessive or inadequate and pass appropriate orders. The Appellate Authority may pass an order confirming, enhancing, reducing or setting aside the penalty or remitting the case to the

authority which imposed the penalty or to any other authority with such directions as it deems fit in the circumstances of the case. "

17. The Regulations nowhere talks about any personal hearing to be given before the disposal of the appeal. Besides, in this case, there is no request for personal hearing made by the petitioner so that this Court could have examined whether by such denial the petitioner was put to any prejudice.

18. The next contention raised by the petitioner was that the appellate authority's order did not show any application of mind and he had not taken any independent decision. It was also stated that the order of the appellate authority is cryptically worded and he has merely affirmed the decision of the disciplinary authority. In the counter affidavit filed by the Respondent, in para 21 it was stated as follows:-

"The Appellate Authority has passed the order after considering the documents produced in the enquiry, the enquiry report, the explanations of the officer and the order of the Disciplinary Authority and after a proper application of mind. Proper reasons have been given by the Appellate Authority while dismissing the appeal."

19. This Court is unable to agree with the submission made by the respondent on this ground and it must be clearly held that the appellate authority i.e. the 1st Respondent had not discharged his duty as an appellate authority under the Regulations. A reading of the appellate order impugned in the writ petition will clearly show that it does not reflect the mind of the appellate authority and he has merely by one sentence order affirmed the decision of the disciplinary authority.

20. The Supreme Court in its decision in Director, Marketing, Indian Oil Corpn. Ltd. & Anr. v. Santosh Kumar reported in 2006 (11) SCC 147 in similar circumstances has held as follows:-

"A close scrutiny of both the orders would only go to show that the Appellate Authority has simply adopted the language employed by the Disciplinary Authority and inflicted the punishment of dismissal on the respondent herein.

For the sake of convenience, we extract both the orders available at page 51-52 of the paper book:

"I have carefully gone through Shri Santosh Kumar, Emp. No. 19957, Ex-AM(Ops) Hissar Depot's appeal dated 25.3.2000 together with all papers relating to the disciplinary case initiated against him vide charge-sheet No. IR/1461/(N-113) dated 24.6.97 in the capacity of the Competent Disciplinary Authority.

I have applied my mind and I find that Shri Santosh Kumar has not brought out any point in his appeal dated 25.3.2000 which may warrant any change in the said final order passed by me as the Competent Disciplinary Authority."

"A perusal of the order passed by the Appellate Authority would only reveal the total non-application of mind by the Appellate Authority."

The order of the appellate authority in that case extracted by the Supreme Court more or less worded similarly to that of the impugned order of the appellate authority (1st Respondent) found in this case as extracted above.

21. Once again the Supreme Court in Chairman, D.A., Rani Lakshmi Bai Kshetriya Gramin Bank. Vs Jagdish Sharan Varshney And Ors. reported in 2009 (4) SCC 240 dealt with the power to be exercised by an appellate authority in a disciplinary matter. It was observed:-

"No doubt, in S.N.Mukherjee's case (supra), it has been observed (vide para 36) that:

"..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."

The above observation, in our opinion, really means that the order of affirmance need not contain an elaborate reasoning as contained in the order of the original authority, but it cannot be understood to mean that even brief reasons need not be given in an order of affirmance. To take a contrary view would mean that appellate authorities can simply dismiss appeals by one line orders stating that they agree with the view of the lower authority.

For the same reason, the decision of this Court in State of Madras vs. Srinivasan, AIR 1966 SC 1827 (vide para 15) has also to be understood as explained by us above.

22. The Supreme Court once again after referring to its previous decisions in the case of Chairman, LIC of India & Ors. Vs. A. Masilamani reported in 2013 (6) SCC 530, observed as follows:

"It is a settled legal proposition, that once the Court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the Court cannot reinstate the employee. It must remit the concerned case to the disciplinary authority, for it to conduct the enquiry from the point that it stood vitiated, and conclude the same.

(Vide: Managing Director, ECIL, Hyderabad etc.etc. v. B. Karunakar etc.etc. AIR 1994 SC 1074; Hiran Mayee Bhattacharyya v. Secretary, S.M. School for Girls & Ors., (2002 10 SCC 293; U.P. State Spinning C. Ltd. v. R.S. Pandey & Anr. (2005) 8 SCC 264; and Union of India v. Y.S. Sandhu Ex-Inspector AIR 2009 SC 161)

The word "consider", is of great significance. Its dictionary meaning of the same is, "to think over", "to regard as", or "deem to be". Hence, there is a clear connotation to the effect that, there must be active application of mind. In other words, the term "consider" postulates consideration of all relevant aspects of a matter. Thus, formation of opinion by the statutory authority, should reflect intense application of mind with reference to the material available on record. The order of the authority itself, should reveal such application of mind. The appellate authority cannot simply adopt the language employed by the disciplinary authority, and proceed to affirm its order. (Vide: Director, Marketing, Indian Oil Corpn. Ltd. & Anr. v. Santosh Kumar, (2006) 11 SCC 147 and Bhikhubhai Vithlabhai Patel & Ors. v. State of Gujarat & Anr., AIR 2008 SC 1771)"

23. In view of the above, there is no hesitation for this Court to hold that the appellate authority had not exercised his appellate jurisdiction in the manner known to law and that his order must go. But, however, the question is whether as prayed for by the petitioner both orders (i.e. that of the disciplinary authority confirmed by the appellate authority) should be quashed and that he must be reinstated.

24. The Supreme Court in its judgment in The Supreme Court Director, Marketing, Indian Oil Corpn. Ltd. & Anr. v. Santosh Kumar (cited supra) quashed both the disciplinary authority as

well as appellate authority's order by granting relief to the aggrieved person. It was observed as under:

"We, therefore, have no other option except to set-aside the order passed by the Disciplinary Authority and the Appellate Authority and remit the matter for fresh disposal to the Disciplinary Authority. The Disciplinary Authority shall consider the detailed representation made by the respondent and also consider the detailed report of the Enquiry Officer and the records placed before him in its proper perspective and decide the matter afresh on merits. The Disciplinary Authority is directed to consider the entire case only on the basis of records already on record. The respondent is not permitted to place any further material or record before the Disciplinary Authority. The order passed by the High Court is set-aside for the above reason. We also set-aside the direction issued by the High Court ordering reinstatement into service with continuity in service and all consequential benefits. The Disciplinary Authority is also directed to dispose of the matter, within three months from the date of receipt of this order, after affording an opportunity to both the parties."

25. But, merely because the appellate authority's order is set aside, it does not mean that the disciplinary authority order also should go along with it. In fact, what is emphasized is that the appellate authority had not applied his mind in dealing with the appeal when specific grievances were projected by an aggrieved officer. In such circumstances, the Court can only quash the appellate order and direct the appellate authority to consider the same in accordance with law. During that interregnum, the aggrieved person will not get any other relief except that the appellate authority may be directed to dispose of the appeal within the time frame. This view has gained currency with the Supreme Court and in a later decision in Chairman, D.A., Rani Lakshmi Bai Kshetriya Gramin Bank. Vs Jagdish Sharan Varshney And Ors. (cited supra), the Supreme Court observed as follows:-

"Hence, we agree with the High Court that reasons should have been contained in the appellate authority's order, but we cannot understand why the High Court has set aside the order of the disciplinary authority, in addition to setting aside the appellate order."

Hence, this appeal is partly allowed and the impugned judgment of the High Court to the extent that it has set aside the order of the disciplinary authority is set aside, and the matter is remanded to the appellate authority to decide the appeal filed by respondent No.1 afresh in accordance with law after affording an opportunity of being heard to respondent No.1 and also by passing a speaking order. The said appeal shall be decided very expeditiously."

26. In view of the above, the impugned order of the 1st Respondent PAD/8/620/35 and dated 9.10.2002 is hereby set aside. The appeal filed by the petitioner dated 13.6.2001 stands restored on the file of the 1st Respondent. The 1st Respondent is hereby directed to dispose of the appeal dated 13.6.2001 in accordance with law. Since the petitioner had made a grievance about a personal hearing being denied though not requested at the time of filing of the appeal, however in the interest of justice, the petitioner shall be given a personal hearing by the 1st Respondent. It is needless to state that the 1st Respondent shall dispose of the appeal as expeditiously as possible and in any event, shall dispose it of within three months from the date of receipt of this order from the Court. In the meanwhile, the petitioner will not be given any other relief and he has to await the outcome of his appeal.

The writ petition is allowed to the extent indicated above. However there will be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

gms

To

+1cc to Mr.Jayaraman, Advocate, S.R.No.3159

KSJ(CO)
RS(08/02/2017)

Writ Petition No.5842 of 2003