HON'BLE SRI JUSTICE A.V.SESHA SAI

Writ Petition No.3923 of 2006

ORDER:

In the present Writ Petition, the challenge is to the order, dated 20.01.2006, passed by the appellate authority/General Manager, State Bank of Hyderabad (Operations), Gunfoundry, Hyderabad-the first respondent confirming the order of punishment, dated 27.7.2004, passed by the disciplinary authority/Deputy General Manager (M), Regional Office, Mumbai-the second respondent.

The petitioner was appointed as a Clerk-cum-Cashier on 08.12.1981 in the respondent-State Bank of Hyderabad at Georai Branch and he was transferred to Akola Branch in June, 1993. While he was working at Akola branch, he was re-designated as Data Entry Computer Operator in the month of July, 2002 and while he was working at Akola branch, a charge memo, dated 28.02.2000, was served on him framing as many as 11 charges. In response to the same, he submitted an explanation. Thereafter, punishment of compulsory retirement was inflicted on him by order, 03.02.2004, and the said order was challenged by him before the Bombay High Court in Writ Petition No.2130 of 2004. The said Writ Petition was allowed by the Bombay High Court, setting aside the order of punishment.

Thereafter, the second respondent-disciplinary authority passed the impugned order, dated 27.7.2004. By virtue of the said order, punishment of compulsory retirement was inflicted on him.

Assailing the legal sustainability of the said order of punishment passed by the disciplinary authority, the petitioner preferred an appeal before the first respondent-appellate authority on 06.9.2004. By virtue of order, dated 20.01.2006, the appellate authority dismissed the said appeal, confirming the order of punishment passed by the disciplinary authority. Challenging the validity and legal sustainability of the said orders passed by the disciplinary and appellate authorities, the present Writ Petition came to be filed.

A counter-affidavit is filed by the respondents denying the allegations and averments made in the affidavit, filed in support of the Writ Petition, and in the direction of justifying the impugned orders.

Heard Sri M.Surender Rao, learned counsel for the petitioner, and Sri A.Krishnam Raju, learned Standing Counsel for the respondent-bank, apart from perusing the material available before the Court.

It is contended by the learned counsel for the petitioner that the orders impugned are highly arbitrary, violative of

Article-14 of the Constitution of India and in contravention of principles of natural justice. It is further submitted by the learned counsel that the respondent-authorities acted in violation of the Clauses in the bipartite settlement and also given a go-bye to principles of natural justice. It is further contended that the very initiation of disciplinary action by the Regional Manager, Aurangabad is illegal and without jurisdiction; that the very initiation of enquiry after a prolonged period of a decade is impermissible; and that the appellate authority did not consider various issues raised in the grounds of appeal and did not assign any reasons for rejecting the appeal. In support of his submissions and contentions, the learned counsel relied upon the following judgments of the Hon'ble Apex Court:

(i) *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union Bank of India and another,*[1]
(ii) *Ram Chander Vs. Union of India and others*[2] and
(iii) ***M/s Kranti Associates Pvt. Ltd & Anr. Vs. Sh. Masood Ahmed Khan and others*** (SLP(Civil).No.20428 of 2007).

On the contrary, it is strenuously contended by the learned Standing Counsel for the respondent-bank that there is no illegality nor there exists any procedural infirmity in the

[1] AIR 1976 SC 1785
[2] 1986 (3) SCC 103

impugned action and having regard to the nature of allegations levelled against the petitioner, the authorities are perfectly justified in passing the orders under challenge. It is further contended that the authorities passed the orders under challenge strictly adhering to Caluse-14 of the bipartite settlement, dated 10.4.2002; that the said Clause does not obligate the appellate authority to assign the reasons; and that, in fact, the appellate authority assigned cogent and convincing reasons in the impugned order. To bolster his submissions and contentions, learned Standing Counsel placed reliance on the judgment of the Hon'ble Apex Court in ***State Bank of Bikaner & Jaipur and others Vs. Prabhu Dayal Grover***[3].

In the above background, now the issues that arise for consideration are whether in the facts and circumstances of the case, the petitioner is entitled for any relief from this Court under Article-226 of the Constitution of India and whether the orders impugned are sustainable and tenable.

The information available before this Court manifestly discloses that the disciplinary authority issued a charge sheet to the petitioner on 28.02.2000, framing the following charges against him :

[3] (1995) 6 SCC 279

"Charge No.1:
You have maintained clearing transfer scroll on 21.8.1992 and put through a fictitious voucher for Rs.10,000/- pertaining to Savings Bank Account No.8368 of Shri Sk. Noor Sk.Chunnumiah instead of genuine voucher of M/s Marad Fertilizers who lodged the draft for Rs.10,000/- for clearing.

Charge No.2:
You have also maintained the clearing transfer scroll and put through credit voucher of Marad Fertilizers for Rs.1,000/- though no cheque/draft was lodged by the part of the clearing on the same date.

Charge No.3:
You have inflated the totals of the clearing transfer scrolls on the both sides on 24.6.1992. The debit side of the transfer scroll was increased by Rs.10,000/- by adding Rs.10,000/- to the entry of Rs.9,914/- appearing at Serial Number 2. Though the entry was rounded off the figure "1" included in ten thousand column was taken into account for arriving at the total of Rs.36,700.37 which was written as side of total Rs.46,614.37 which was struck off.

Charge No.4:
To accommodate the genuine credit of Rs.10,000/- of M/s Marad Fertilizers, you have increased the Savings Bank Summary (Day Book) 21 onwards on 24.6.1992 in the debit side by Rs.10,000/-. The actual total which comes to Rs.36,500 was altered as Rs.46,538.80 to tally the clean cash.

Charge No.5:
You have given fictitious credit to Savings Bank Account No.8368 of Shri Sk.Noor and Sk.Chummuniya and withdrawn Rs.10,000/- from this account using a forged withdrawal form.

Charge No.6:
To accommodate the credit of Rs.10,000/- given to M/s Marad Fertilisers, you had added it to

Rs.10,000/- in Savings Bank Books PG-26 against the name of Shri M.B.Mahadhar Account No.10045 though there was no withdrawal on that day as seen from ledge account of the account holder. The amount of Rs.10,000/- was also taken into the progressive book.

Charge No.7:

As the PG-26 ledger was not tallying with the progressive book, you have increased the credit side of PG-26 day book in the summary from Rs.11,000/- to Rs.11100/- on 12.9.1992 and thereby, PG-26 ledger was tallied with the progressive book. However, as the total of the summary day book was not altered the clean cash was tallied for the day.

Charge No.8:

A factious entry of Rs.10,000/- was imported in the ledger PG-1 on 15.9.1992 so as to appear that Shri S.A.Shelgaonkar Account No.1748 has withdrawn Rs.10,000/- from his account. But, the debit is not appearing on the debit side of the ledger account.

Charge No.9:

To off-set the above fictitious debit entry of Rs.10,000/- given in day book No. PG-1 on 15.9.1992 the clearing transfer scroll was inflated on two sides by Rs.10,000/-. In page No.85 the debit side of the scroll was altered from Rs.8,26,175.37 to Rs.8,36,175.37 and page No.87 the total Rs.7,74,501.00 and altered total is carried into main transfer scroll. The clearing transfer scroll was maintained by you.

Charge No.10:

While maintaining the clearing transfer scroll on 10.10.1992 you had incorporated two entries for Rs.1120/- and Rs.2883.56 on the debit side and an amount of Rs.4003.56 on the credit side. A credit of Rs.4003.56 was afforded to the account number

> 8368 of Shri Sk.Noor Sk.Chunnumiya on 10.10.1992 but they are no such entry in the clearing presentation register on the same state.
>
> **Charge No.11:**
>
> You have prepared a debit voucher for No.4003.56 on 4.11.1992 debiting the S.B. Account No.8368 of Shri Sk.Noor Sk.Chunnumiya and also prepared a credit voucher for the same amount for credit of Inoperative S.B. Account. The narration mentioned on the debit voucher is Cheque Returned in clearing on 10.10.1992 but no debited and on the credit voucher erroneously debited on 10.10.1992. It is seen that the account holder has never transferred any cheque for credit of this account at any time."

Responding to the same, the petitioner submitted an explanation. There is also no controversy that earlier, when an order of punishment was passed by the disciplinary authority on 03.02.2004, the same was set aside by the Bombay High Court in Writ Petition No.2130 of 2004. Thereafter, the disciplinary authority passed the order under challenge, dated 27.7.2004, inflicting the punishment of compulsory retirement on the petitioner. Assailing the validity and legal sustainability of the said order of punishment passed by the disciplinary authority-the second respondent, the petitioner filed an appeal before the first respondent-appellate authority. A perusal of the memo of grounds of appeal, placed on record as material paper along with the writ petition, reveals that the petitioner raised the following grounds:

"(a) Initiation of disciplinary action by RM, Aurangabad was illegal and without jurisdiction.
(b) After initiation of disciplinary action by RM, imposition of punishment by DGM (M) as disciplinary authority is also illegal.
(c) Initiation and conclusion of disciplinary action by two different authorities is violation of provisions of Bipartite settlement.
(d) Initiation of enquiry after a prolonged period a decade is illegal and violation of principles of natural justice as the defence is put to hardship for searching evidences for his defence as many a number of records are not easily traceable.
(e) Non-examination of material evidence in itself violates the enquiry.
(f) Non-marking of exhibits clearly indicate that there are no supporting documentary evidence in support of charge.
(g) No legal evidence has come on record of enquiry in support of charge."

The appellate authority-the first respondent by order, dated 20.01.2006, rejected the said appeal. A perusal of the said order passed by the appellate authority reveals that while rejecting the appeal, the appellate authority made the following observations:

"(i) Since it is a case of fraud which surfaced after eight years, it cannot be said that there is delay in taking action.
(ii) Order has been issued by appropriate disciplinary authority after due consideration.
(iii) Enquiry Officer's report shows that the relative registers/documents have been examined and

therefore, the contention that examination of material evidence has not been conducted, is not correct.

(iv) The contention that the punishments have been awarded to a single imputation is also not correct, as the penalty imposed is a single punishment and is in line with clause-6(b) of Memorandum of settlement on Disciplinary Action Procedure for Workmen signed between Indian Banks Association and Workmen Unions on the 10th April, 2002."

A perusal of the above said order, in clear and unequivocal terms, discloses that the appellate authority did neither advert to the contents of grounds of appeal filed by the petitioner nor considered the validity and legal sustainability of the same. The said order is totally a non-speaking order. The appellate authority did not assign any sort of reasons, much less valid reasons, for arriving at the conclusion for rejecting the appeal except stating that it is a case of fraud and as such, the question of delay does not arise; that the disciplinary authority passed the impugned order only after due consideration; and that the enquiry officer examined the issues in detail.

The appeal provided under law cannot be treated or regarded as a mere formality and the appellate authority is required to consider the contents of the grounds of appeal objectively and assign reasons for arriving at the conclusions. In this connection, it may be appropriate to refer to the judgments of the Hon'ble Apex Court cited by the learned counsel for the petitioner.

In ***The Siemens Engineering and Manufacturing Co. of India Ltd.*** (1st supra), the Hon'ble Apex Court held that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons and that the rule requiring reasons to be given in support of an order is, like the principle of *audi alteram patem,* a basic principal of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law.

In the instant case, the said principle is followed in breach by the respondent authorities.

In ***Ram Chander (2nd supra),*** the Hon'ble Apex Court at para-24 categorically held that the appellate authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal and the action of assigning reasons would promote public confidence in the administrative process.

In ***M/s Kranti Associates Pvt. Ltd & Anr. Vs. Sh. Masood Ahmed Khan and others*** (SLP(Civil).No.20428 of 2007), the

Hon'ble Apex Court found fault with the action of the appellate authority in not assigning reasons.

Coming to the judgment relied on by the learned Standing Counsel for the respondent-bank, *i.e.*, in ***State Bank of Bikaner & Jaipur and others*** (*3rd supra*), the Hon'ble Apex Court while dealing with Regulation-20(2) of the State Bank of Bikaner and Jaipur Officers Service Regulation, noted the language of the said Regulation and also observed that the appellant authority assigned reasons and applied its mind and therefore, it refused to meddle with the orders impugned therein. Regulations of any such nature is absent in the present case.

While referring to the above said judgment, the learned Standing Counsel has made an attempt to justify the action of the appellate authority under Clause-14 of the bipartite settlement, dated 10.4.2012, which is placed on record by him. Clause-14 of the said settlement stipulates that if the employee concerned is so desirous, the appellate authority shall, in a case of dismissal, hear him or his representatives before disposing of the appeal and in cases where hearings are not required, the appeal shall be disposed of within two months from the date of receipt thereof.

In the considered opinion of this Court, the judgment of the Hon'ble Apex Court in ***State Bank of Bikaner & Jaipur and***

others (***3rd supra***) would not render any assistance to the respondents in view of the judgments cited by the learned counsel for the petitioner, referred to supra.

In the instant case, the appellate authority totally ignored various contentions raised by the petitioner in the grounds of appeal and did not even refer to them. The mode and manner in which the appellate authority considered the issue, in the facts and circumstances of the case, cannot be approved by this Court.

For the aforesaid reasons, the Writ Petition is partly allowed, setting aside the order, vide PER/GR.XI-A/F-1/6834, dated 20.01.2006, of first respondent-appellate authority and the matter is remanded to it for fresh consideration in accordance with law and for passing appropriate orders, after giving notice and an opportunity of hearing to the petitioner.

As a sequel to disposal of the Writ Petition, the Miscellaneous Petitions pending, if any, shall stand disposed of.

JUSTICE A.V.SESHA SAI

22nd June 2017
DR