

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.2864 of 2000

ORDER:

Heard the counsel for petitioner, and Sri A. Krishnam Raju, counsel for respondents.

2. The petitioner was employed as Attender in Syndicate Bank at Begum Bazar Branch, Hyderabad in the year 1997.

3. On 06.02.1997, the 5th respondent issued memo to the petitioner that the latter was requested by the 5th respondent to accompany for remittance on that day to the said Bank's currency chest along with one Sri M.V.S. Murthy, and the petitioner refused to accompany him for remittance. It was further stated that petitioner's refusal to carry out lawful instructions of the 5th respondent was not in order and he should submit an explanation immediately.

4. The petitioner gave a response thereto on 10.02.1997 to the 5th respondent stating that on that day he came to the Begum Bazar Branch, Hyderabad at 09:30 a.m. as usual; that cash counter was open at 10:10 a.m. and at 11:00 a.m. the 5th respondent had called him to look after the entire counter as no attenders had come except one temporary attender; that the said temporary attender was asked to go to the cash department; and that the petitioner was attending to his allotted duties; that he observed that payments cashier one Mr. G. Rajanna was stitching and assisting the temporary attender; that

thus 5th respondent had entrusted cash stitching duties to temporary attender avoiding a permanent attender who actually ought to be doing the said job; therefore, when petitioner was called at 03:15 p.m. by the 5th respondent and asked to go for the remittance along with the officer, he had informed the 5th respondent to take assistance of the same attender who is attending cash duties right from the morning; that the 5th respondent then asked one Mr. Laxminarayana, temporary Special Assistant, who was sitting there to stand as a witness to the incident, and expressed his intention to serve petitioner with a memo in that regard; that there is a doubt whether 5th respondent's request to the petitioner to accompany him to the currency chest was official or personal; and that petitioner's action would not amount to refusal to carry out the lawful instructions of the superiors.

5. Thereafter, a charge-memo was issued on 28.02.1997 by the 3rd respondent to petitioner stating that he had refused to accompany Sri M.V.S. Murthy, Assistant Manager for cash remittance and disobeyed lawful and reasonable orders of his superiors, and he should submit explanation thereto in fifteen days.

6. The petitioner gave an explanation thereto on 17.03.1997, reiterating the stand taken by him in his response dt.10.02.1997. He stated therein that at about 03:15 p.m. the 5th respondent called and asked him to go to currency chest for cash remittance of Rs.11,92,000/- along with an Officer; that he then informed the 5th respondent to take the assistance of the same attender

who was attending to cash duties right from the morning; and by entrusting the cash department duties in the morning to a temporary attender, the 5th respondent not only violated the manual of instructions of the Head Office and Reserve Bank of India guidelines, but also exposed the Bank to great risk; that the Branch remits daily to currency chest about ten to fifteen lakh rupees and invariably the services of a permanent attender is required daily in the cash department which fact was known to the 5th respondent; that the attender, who accompanies the remittance, should also sign the debit voucher, outward remittance book and the credit vouchers in the currency chest, which signifies that he holds himself responsible for the correctness of the cash sections and bundles made by him during the business hours; that the attender in the cash department is not merely a *coolie* carrying the cash box from one place to another; that it was also necessary for the attender accompanying remittance to sign various papers for the purpose of insurance coverage; that therefore, the very instructions of 5th respondent to the temporary attender in the morning was unlawful and the instructions given to petitioner at 03:15 p.m. to accompany the remittance was unreasonable; that since he had not done stitching the cash and bundling work in the morning, he was not in a position to accompany the remittance; that he was very much perturbed by the irregular actions of the 5th respondent; he was very particular about rules and regulations and it was unreasonable for the 5th respondent to expect petitioner to take responsibility of cash department work which some temporary attender had done earlier in

the day; and he could not have been asked to affix his signature for the work done by somebody that too a temporary employee; that if there is any difference in the cash remittance or the quality of work done is poor, he would be held responsible and at that juncture, nobody would come to his rescue; that the 5th respondent concealed the facts inconvenient to him and revealed only those facts which are misleading; and therefore, the issue be dropped by the disciplinary authority.

7. This was again reiterated in another letter dt.17.04.1997, sent by petitioner to the 3rd respondent wherein he reiterated that when cash limit increases Rs.10 lakhs and above, one Officer, one Clerk and one Attender should accompany the remittance, and the Head Office of the Bank says that any violation in following the rules laid down in Circulars while remitting the cash would be viewed seriously; and that on the previous day, the cash remittance was Rs.16,44,000/-, and the Manager remitted the cash with the help of one Attender only in violation of the remittance rules; and that he expressed fear that position of an attender in such circumstances, where his superiors did not follow instructions of the Bank, would be serious, if something happened during the remittance.

8. Dissatisfied with the petitioner's explanation, the 3rd respondent issued charge-sheet dt.23.05.1997 alleging that on 06.02.1997, at about 03:15 p.m., remittance of Rs.11,92,000/- was required to be sent to currency chest, Hyderabad; that petitioner was

requested by the 5th respondent to accompany the said cash remittance, but failed to carry out lawful and reasonable orders of his superior officer in accompanying the cash remittance; the 5th respondent was compelled to seek the services of clerical staff of the Branch, and thus hindered the smooth functioning of the Branch; that petitioner's conduct amounted to gross misconduct under the provisions of the bi-partite settlement which in Clause 19.5 (e) dealt with the '*gross misconduct of willful disobedial of lawful and reasonable orders of your superiors*'. The petitioner was asked to submit explanation to the same.

9. Petitioner submitted explanation to the charge-sheet on 11.06.1997, denying the charge and reiterating that the Manager of the Bank says whenever cash remittance exceeds Rs.10 lakhs and above, one Officer, one Clerk and one Attender should accompany; but on 06.02.1997, remittance was carried out by one Officer and one Clerk and one temporary Attender accompanied, but his signature was not obtained anywhere; and that it is clear that there was no question of disturbing a clerk caused on account of petitioner not accompanying the Assistant Manager for remittance, and there was no hindering of the smooth functioning of the Branch; that if he had intentionally disobeyed the lawful orders of his superiors, he would not have attended cash remittance on 16.04.1997 for Rs.16,44,000/- which was remitted to the Currency Chest, Hyderabad by the 5th respondent and himself; that on 16.04.1997, the 5th respondent entrusted him with

cash department duties right from the morning and so the petitioner attended to remittance even though this remittance is also not in accordance with the Rules. He referred to his earlier letter dt.17.04.1997 and contended that on 10.06.1997 also one more incident occurred, and the 5th respondent ordered him to do unlawful duties; that he had explained to the 5th respondent that he had completed slip bundles stitching and asked for seal to wax the stitched slip bundles; that the 5th respondent did not find the seal and that he then asked the 5th respondent to place an indent to the stationery bill; and that the 5th respondent then brought one bolt and asked the petitioner to seal the slip bundles with the help of that bolt, and this was also highly improper.

10. Dissatisfied with the explanation to the charge-sheet, the 3rd respondent appointed the 4th respondent as Enquiry Officer to inquire into the conduct of the petitioner.

11. The petitioner then replied to the 3rd respondent on 30.07.1997 alleging that Enquiry Officer had been appointed without considering his reply to the charge-sheet dt.23.05.1997.

12. The 5th respondent responded to the petitioner's letter on 08.08.1997 stating that he was not satisfied with the petitioner's explanation to the charge-sheet and had decided to pursue further in the matter by holding regular departmental enquiry, and so he had appointed the Assistant Personnel Manager, Zonal Office, Hyderabad

as Enquiry Officer. The petitioner was advised to appear before the enquiry officer and participate in the enquiry.

13. Thereafter, the 4th respondent issued a letter dt.14.08.1997 to the petitioner asking him to attend the enquiry on 22.09.1997 at 11:00 a.m. at the Zonal Officer of the Bank at Hyderabad.

14. The petitioner sent a reply on 16.08.1997 stating that he was only an attender, that he did not belong to any Trade Union, and so he should be permitted to defend himself by taking assistance of an Advocate in accordance with Clause 19.12.

15. This request of petitioner was rejected by the 3rd respondent on 30.08.1997 on the ground that the Presenting Officer is not a legally trained person, and he ought to take assistance of a defence representative permitted by the Bipartite Settlement, if he so desired.

16. The petitioner then preferred an appeal on 18.09.1997 to the 2nd respondent alleging bias against the 3rd respondent and requested him to intervene in the matter and redress his grievance.

17. The Personnel Manager of the Bank informed petitioner on 14.10.1997 that there is no provision for an interim appeal to the Appellate Authority, i.e., the 2nd respondent, and petitioner should approach 2nd respondent only after 3rd respondent passes a final order.

18. The petitioner then addressed letters dt.15.11.1997 to 2nd respondent, letter dt.22.09.1997 to 4th respondent, and letter dt.03.12.1997 to 5th respondent to adjourn the enquiry,.

19. The enquiry was adjourned and in the mean time, the petitioner filed WP.No.33608 of 1997 before this Court challenging the charge-sheet dt.23.05.1997 issued to him.

20. This Court disposed of the Writ Petition on 17.12.1997 stating that interest of the petitioner can be protected by directing the Enquiry Officer to decide on the plea of the petitioner that he wants to engage a Lawyer for defending him before the enquiry is started. This Court permitted the petitioner to make application before the Enquiry Officer requesting to allow him to be defended by an Advocate, and the Enquiry Officer was asked to decide the same on merits.

21. Thereafter, the petitioner addressed a letter dt.18.12.1997 to the Enquiry Officer to permit him to avail services of an Advocate

22. The 4th respondent, through letter dt.12.01.1998, rejected petitioner's request. He stated that petitioner's request is not valid, since the petitioner's request had already been rejected by the disciplinary authority, and he cannot reconsider the said request. It was stated that the Management Representative is a Diploma Holder in Industrial Relations, and the 5th respondent was his witness, but the Management Representative was only an Officer in General Banking and not a legally trained person and did not have previous legal

experience. Therefore, the petitioner was advised to make necessary arrangements to get the 5th respondent cross-examined as per procedure.

23. Thereafter, the enquiry was conducted.

24. However, the petitioner took a stand that he had filed a Contempt Case in the High Court and had also alleged bias against the Enquiry Officer, and the Enquiry Officer should wait till the Contempt Case is disposed of. He also stated that he did not know English language, and did not have defence representative to defend him, and therefore, he was not participating in the enquiry.

25. The Enquiry Officer then concluded the enquiry on 21.12.1998, recording that the petitioner did not wish to cross-examine the Management's witnesses.

26. The petitioner refused to sign the enquiry proceedings on the ground that charges are grave in nature, and he was denied permission to engage an Advocate to defend himself.

27. Subsequently, the Contempt Case No.2207 of 1998 filed by the petitioner alleging willful disobedience of the order dt.17.12.1997 in WP.No.33608 of 1997 was dismissed on 15.02.1999, holding that there was no willful disobedience of the order of the Court and granting liberty to petitioner to challenge the order of the Enquiry Officer in appropriate proceedings.

28. Thereafter, the Enquiry report was communicated to the petitioner by the 3rd respondent on 03.03.1999, and petitioner was asked to make his submissions on the findings of the enquiry within fifteen days.

29. In the enquiry report dt.01.03.1999, the Enquiry Officer found that the petitioner was guilty of the charge of committing willful disobedience of lawful and reasonable orders of his superior.

30. The petitioner gave his objections to the Enquiry report on 25.03.1999.

31. After considering the said objections, the 3rd respondent on 21.04.1999, proposed to impose punishment of bringing down petitioner's basic pay by two stages in the scale of pay for a period of two years, and asked the petitioner to appear before him.

32. The petitioner again gave written submissions on 29.04.1999 and sought to be exonerated of the charges.

33. After considering the same, on 18.06.1999, the 3rd respondent imposed punishment of deduction of the basic pay of the petitioner by two stages in the scale of pay for a period of two years.

34. The petitioner then preferred an appeal on 05.07.1999 to the 2nd respondent. The said appeal was also rejected on 06.10.1999.

35. Assailing the same, the present Writ Petition is filed.

CONTENTIONS OF COUNSEL FOR PETITIONER

36. The counsel for petitioner contended that non-consideration of his explanation to the charge-sheet by framing of charges itself was arbitrary and indicated the prejudice against him by the respondents ; the charge framed against the petitioner was a serious one; that petitioner had sought for permission to defend himself through an Advocate which was not given by the 3rd respondent; that this indicated the bias of the 3rd respondent; and when the petitioner specifically alleged such bias, it has to be taken that the 3rd respondent had prejudice against him; that the respondent nos.2, 4 and 5 were biased against him; that the findings of the Enquiry Officer are perverse; and the punishment is grossly disproportionate to the proved misconduct. He also raised a plea that the order of the appellate authority was cryptic.

CONTENTIONS OF COUNSEL FOR RESPONDENTS

37. Sri A.Krishnam Raju, learned counsel, appearing for the respondents refuted the above contentions. He stated that though the petitioner was entitled to take assistance of the defence representative to defend him in the enquiry as provided in clause 12 (a) (i) (y) and 12 (a) (ii) of Bipartite Settlement, but the petitioner did not choose to take assistance any defence representative and that the rules governing the service conditions of the petitioner did not contain any provision permitting availing of service of advocate by a charge sheeted employee. He also denied that the petitioner is entitled to be defended

by an advocate as a matter of right. He pointed out that the Presenting Officer appointed by the respondents was not legally trained person and that the petitioner was not entitled to be defended through a legal practitioner in the enquiry since the rules do not permit the same; and no prejudice was also caused to the petitioner on account of such refusal in granting permission to avail assistance of an advocate in the enquiry initiated against him by the bank.

38. He also contended that relevant evidence was placed in the enquiry in regard to the charges leveled against the petitioner and the enquiry officer held that the charges are proved on the basis of evidence available in the enquiry. It was pointed out that the petitioner did not cross examine the witnesses produced by the management nor did he examine any witnesses on his behalf.

39. It was denied that there was any violation of principles of natural justice in conducting enquiry proceedings by 4th respondent and that 4th respondent gave more than adequate opportunity to petitioner to participate in the proceedings but petitioner did not show any inclination to defend himself by either leading evidence or cross examining the management witnesses.

40. It was also stated that proceedings dt.18-06-1999 of the disciplinary authority indicate that he considered entire record in regard to the enquiry as well as the explanation dt.29-04-1999 of the petitioner, and that he also gave personal hearing to the petitioner

before passing the order. It is stated that 3rd respondent also gave detailed reasons why he agreed with the findings of the enquiry officer and rejected the explanation given by the petitioner.

41. He also stated that punishment awarded to the petitioner is reasonable for the misconduct committed by him and there is no warrant for interference with the same.

42. He also stated that the order of the appellate authority dt.06-10-1999 is also valid; that it is not cryptic; and that it was passed taking into account the contentions raised by the petitioner. He also contended that no prejudice was entertained against the petitioner by the respondents at any time and the contention of the petitioner to the contrary cannot be countenanced.

THE CONSIDERATION BY THE COURT

43. From the facts narrated above, it is clear that though the petitioner received the copy of the charge sheet on 23-05-1997 and gave an explanation to the same on 11-06-1997 denying the charges, on the pretext that he was not allowed to engage an advocate to defend himself in the enquiry, the petitioner did not cross examine the management witnesses and also did not lead any evidence on his behalf. On the basis of evidence adduced in the enquiry by the management, the enquiry officer held the petitioner guilty of the charges framed. The disciplinary authority agreed with the report of

the enquiry officer and imposed the punishment of reduction of basic pay of the petitioner by two stages for two years.

44. I am also of the view that the charge framed is not a very serious one warranting grant of permission to petitioner to engage an advocate.

45. The petitioner's plea that he ought to have been allowed to engage an advocate to defend him in the enquiry cannot be also accepted since he did not dispute the fact that the Presenting Officer is not a legally trained person. In such circumstances, the provisions of the Bipartite Settlement [clause 12 (a) (i) (y) and 12 (a) (ii)] which are binding on him do not permit engagement of an advocate, though they permit him to take assistance of the defence representative who is a representative of registered trade union of employees of the bank.

46. In **Crescent Dyes and Chemicals v. Ram Naresh Tripathi**¹ and in **Cipla Ltd. v. Ripu Daman Bhanot**², the Supreme Court held that right to be represented in the departmental proceedings initiated against a delinquent employee can be regulated or restricted by the management or by the Service Rules. It was held that the right to be represented by an advocate in the departmental proceedings can be restricted and regulated by statutes or by the Service Rules including the standing orders, applicable to the employee concerned. The whole case-law was reviewed by it in **Bharat Petroleum Corpn.**

¹ (1993) 2 SCC 115

² (1999) 4 SCC 188

Ltd. v. Maharashtra General Kamgar Union³ and it was held that a delinquent employee has no right to be represented by an advocate in the departmental proceedings and that if a right to be represented by a co-workman is given to him, the departmental proceedings would not be bad only for the reason that the assistance of an advocate was not provided to him.

47. Petitioner in fact approached this Court by filing W.P.No.33608 of 1997 raising the contention that he ought to be allowed to engage an advocate, but this Court did not accept the said contention and asked the enquiry officer to decide his plea.

48. On the pretext that he was not allowed to engage an advocate, the petitioner did not cross examine the management witnesses and also did not examine any witnesses on his behalf. He ought to have availed the services of the defence representative other than an advocate and defended himself in the enquiry and he cannot now be allowed to take advantage of his own wrong and seek to have the orders of disciplinary authority and appellate authority set aside.

49. When the petitioner did not avail the opportunity of cross examine the management witnesses and did not lead any evidence of his own, he cannot blame the enquiry officer for submitting the enquiry report adverse to him, or disciplinary authority imposing the

³ (1999) 1 SCC 626

punishment or appellate authority confirming the same, on the ground of non-consideration of certain material.

50. The plea of bias/prejudice raised by the petitioner also cannot be countenanced since the rejection of the petitioner's request for engaging an advocate was based on the bipartite settlement, which is binding on him. So petitioner cannot seek to raise the plea of prejudice on the pretext that 3rd respondent would be prejudiced against him automatically since he complained on 18-09-1997 to the General Manager (Personnel) of the Bank against 3rd respondent. In fact there is no evidence of such prejudice adduced by petitioner at all.

51. I also hold that 3rd respondent passed the order imposing the punishment referred to above against the petitioner on basis of the evidence adduced in the enquiry. He correctly held that the pleas raised by the petitioner in his explanation to the charge sheet were not proved by him in the enquiry in his defence at the relevant stage (by not availing the opportunity for cross examining the management witnesses or adducing any independent evidence on his behalf). He rightly held that petitioner's refusal to accompany the cash remittance on 06-02-1997 in spite of the 5th respondent instructions had unambiguously come out in the witnesses deposition.

52. Having regard to the nature of the misconduct alleged against the petitioner, which was found proved in the disciplinary enquiry, I am of the opinion that the punishment of bringing his basic

pay by two stages for a period of two years is proportionate, and is not shocking to the conscience of the Court warranting interference with the said punishment also.

53. In this view of the matter, I do not find any merit in the Writ Petition and it is accordingly dismissed. No costs.

54. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 07-12-2017
ndr/kvr

