

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 18800 OF 2002

ORDER:

This writ petition is filed by the petitioner seeking Writ of Mandamus declaring the impugned order No.CRP/PER/C/012/2795, dated 5.9.2002, as illegal and arbitrary and set aside the same and to issue a consequential direction to the respondent to drop all further proceedings in pursuance of the charge sheet No.C.28/108, dated 9.6.1998.

Heard Sri K.Vasudeva Reddy, learned counsel for the petitioner and Sri J.Srinivasa Rao, learned Standing Counsel for the respondent.

It is contended by the petitioner that he was appointed as Junior Accounts Officer in the respondent-Company on 4.8.1989. While he was working as such, charge sheet had been issued on 9.6.1998 and he had submitted his explanation on 11.7.1998. After initiation of enquiry, the enquiry officer had submitted a report on 5.8.2000 and when the same had been communicated to him, it had been revealed that the disciplinary authority differed with the findings of the Enquiry Officer, dated 5.8.2000 holding that the charges leveled against the petitioner are not proved, but the disciplinary authority had elaborately considered the enquiry report and gave specific findings on the report of the Enquiry Officer and came to the conclusion that the charges leveled against the petitioner were proved. The disciplinary authority had furnished a copy of the enquiry report consisting of 41 pages to the petitioners and also the findings recorded by the disciplinary

authority on 25/27.4.2002 to the petitioner asking the petitioner to submit his explanation within seven days. The petitioner had submitted his objections to the report of the Enquiry Officer as well as to the findings recorded by the disciplinary authority on 6.5.2002. But without appreciating his explanation, the disciplinary authority had issued the impugned order, dated 5.9.2002 imposing the penalty of reduction to a minimum time scale of pay and also ordered to recover an amount of Rs.2.50 lakhs from his salary. Thereafter, the petitioner had preferred an appeal on 19.9.2002.

The grievance of the petitioner is that the appellate authority had not interfered with the punishment of recovery ordered against the petitioner and in those set of circumstances, he had filed the present writ petition.

Learned counsel appearing for the petitioner would contend that the disciplinary authority had come to a conclusion without giving an opportunity to the petitioner to defend his case and had taken a decision holding that the charges leveled against the petitioner have not been proved and issuance of show cause notice is only an empty formality.

Learned counsel for the petitioner had relied upon the Judgment of the Hon'ble Supreme Court in the case of ***Punjab National Bank and others vs. Kunj Behari Misra***¹ and he had drawn the attention of this Court to para-18 of the said Judgment, which reads as under:

“Under Regulation 6 the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer his report is not final or conclusive

¹ AIR 1998 SUPREME COURT 2713

and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself hold an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not to be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding guilty, imposes punishment on the officer. In our opinion, in any such situation the charges officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar's case (1994 AIR SCS 1050) (supra)".

Learned counsel for the petitioner would contend that when this case came up for admission, this Court had passed an interim order on 26.9.2002 suspending the recovery orders. In pursuance of the interim orders passed by this Court, no recovery is made from the salary of the petitioner.

Learned Standing Counsel appearing for the respondent would contend that as the petitioner had preferred an appeal and the same is pending before the appellate authority, the petitioner could not have filed the present writ petition. Therefore, the

appellate authority may be directed to dispose of the appeal, which is pending before him.

This Court, having considered the rival submissions of the parties, is of the considered view that the disciplinary authority could not have come to the conclusion to the effect that the charges leveled against the petitioners were proved by differing with the findings of the Enquiry Officer and thereafter, he issued the show cause notice asking the petitioner to submit his explanation to the findings of the disciplinary authority, which is contrary to law laid down by the Hon'ble Supreme Court as stated supra. Therefore, to meet the ends of justice, the writ petition can be disposed of directing the appellate authority to dispose of the appeal.

Accordingly, this writ petition is disposed of directing the appellate authority to consider the appeal and dispose of the same, in accordance with law laid down by the Hon'ble Supreme Court as stated supra, within a period of four weeks from the date of receipt of a copy of this order.

ABHINAND KUMAR SHAVILI, J

Dated: 05.09.2018

Slk

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