



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.8357 OF 2019

Ashok S/o Somaji Ramteke,

Aged about Major, Occupation – Retired,
Resident of Ramteke Niwas, Near Shinde
Mangal Karyalaya, Sarkar Nagar,
Chandrapur-1.

... Petitioner

Versus

1. Bank of India,

Vidarbha Zone, Zonal Office,
“Sumati Palace”, situated Opposite
Ranjan Sabhagruh, Mahavir Udyan,
Adjacent to Bachelor Road, Ram Nagar,
Wardha-442001, (E-mail Ir.Vidarbha@BOI.Com.in),
through its Deputy General
Manager/Zonal Manager and
Appellate Authority of Vidarbha Zone,
Wardha.

2. Bank of India,

Vidarbha Zone, Zonal Office,
“Sumati Palace”, situated Opposite
Ranjan Sabhagruh, Mahavir Udyan,
Adjacent to Bachelor Road,
Ram Nagar, Wardha-442001,
(E-mail Ir.Vidarbha@BOI.Com.in),
through its AGM and Disciplinary
Authority, Vidarbha Zone,
Wardha.

3. Shri Manohar G. Pimpalkar,

(Enquiry officer) now working as

“Deputy Zonal manager”, Bank of India (zonal office),

Ahmedabad Zone, 1st Floor, Bank of India,

Bhadra, Ahmedabad-380001-Gujrat

(M.No.9673041850)

... Respondents

Shri S.K. Tambde, Counsel for Petitioner.

Shri U.A. Gosavi, Counsel for Respondents.

CORAM : NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.

DATE : 12th FEBRUARY, 2025

ORAL JUDGMENT (PER NITIN W. SAMBRE, J.) :

1. **Rule.** Shri U.A. Gosavi, learned counsel for the respondents, waives the notice of hearing. By consent, the petition is being disposed of finally.

2. The petitioner, who is claiming to be the employee of the respondent-Bank, was served with the show cause notice alleging therein certain misconduct. The petitioner resisted the said allegations. However, an enquiry was conducted against him and a final order of punishment came to be saddled on the petitioner on 31st October, 2018.

3. The petitioner suffers from the order of dismissal with his disqualification from future employment. Regulation 17 of the Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976

(hereinafter referred to as 'the Regulations of 1976') provides for remedy of appeal. Regulation 17 reads thus :

"17. Appeals :

(i) An officer employee may appeal against an order imposing upon him any of the penalties specified in regulation 4 or against the order of suspension referred to in regulation 12. The appeal shall lie to the Appellate Authority.

(ii) An appeal shall be preferred within 45 days from the date of receipt of the order appealed against. The appeal shall be addressed to the Appellate Authority and submitted to the authority whose order is appealed against. The authority whose order is appealed against shall forward the appeal together with its comments and the records of the case to the Appellate Authority. The Appellate Authority shall consider whether the findings are justified 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 direction as it may deem fit in the circumstances of the case :

Provided that -

(i) If the enhanced penalty which the Appellate Authority proposed to impose is a major penalty specified in clauses (f), (g), (h) and (j) of regulation 4 and an inquiry as provided in regulation 6 has not already been held in the case, the Appellate Authority shall direct that such an enquiry be held in accordance with the provisions of regulation 6 and thereafter consider the record of the inquiry and pass such orders as it may deem proper;

(ii) If the Appellate Authority decides to enhance the punishment but an enquiry has already been held as provided in regulation 6, the Appellate Authority shall give a show-cause notice to the officer employee as to why the

enhanced penalty should not be imposed upon him and shall pass final order after taking into account the representation, if any, submitted by the officer employee.”

4. The petitioner, as a sequel of above, against the order dated 31st October, 2018 ordering dismissal of service, preferred an appeal before the respondent No.1-Appellate Authority. The said appeal came to be dismissed by the Appellate Authority vide impugned order dated 16th April, 2019.

5. Being aggrieved, the petitioner has preferred this petition.

6. Shri S.K. Tambde, learned counsel appearing for the petitioner, would urge that the remedy of appeal provided under Regulation 17 of the Regulations of 1976 is a statutory remedy. Even in absence of there being any express provision of granting an opportunity of personal hearing by the Appellate Authority under Regulation 17, since the Appellate Authority is adjudicating upon the rights of the petitioner, which has adverse civil consequences, viz. that the petitioner being dismissed from service with further disqualification from securing any employment in future, the order has to be inferred as penal in nature. According to him, in such an eventuality, Regulation 17 has to be read to include grant of opportunity of personal hearing. He would further claim that the denial of opportunity of personal hearing would amount to violation of constitutional/fundamental right guaranteed under Article 14 of the Constitution of India.

7. The learned counsel for the petitioner, so as to substantiate the aforesaid contentions, has drawn support from the judgment of the Division Bench of this Court in the matter of ***Dinkar Rajaram Sarap Vs. Chairman/Managing Director, Central Bank of India, Mumbai and others***, reported in ***2019(5) Mh.L.J. 554***, particularly Paragraphs 9 to 12.

8. As against above, Shri U.A. Gosavi, learned counsel appearing for the respondents, would invite our attention to the language employed in Regulation 17, referred supra. According to him, even after the appellate remedy of appeal is availed, there is a remedy of review under Regulation 18 of the Regulations of 1976 which the petitioner has not exhausted. The learned counsel for the respondents would urge that had it been a case that the petitioner has taken a recourse to the remedy of review under Regulation 18, the grievance made in the present petition would have been looked into.

9. According to the learned counsel for the respondents, plain reading of Regulation 17, referred above, which provides for remedy of appeal in express terms, does not provide for an opportunity of personal hearing. According to him, in case the punishment is to be enhanced from the existing one, i.e. dismissal, then only an opportunity of hearing is required to be offered. He would further claim that the Appellate Authority is not required to hear the petitioner, viz. the aggrieved person, if it simply endorses or agrees with the findings recorded by the Disciplinary Authority

and as such no different view is expressed. In such an eventuality, the claim of violation of Article 14 of the Constitution of India or the principles of natural justice is not required to be adhered to. The learned counsel for the respondents has, therefore, sought the dismissal of the petition.

10. We have considered the rival claims.

11. It is not in dispute that the services of the petitioner are governed by the Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976 and the Bank of India Officer (Employees) Acceptance of jobs in Private Sector Concerns After Retirement Regulations, 1980.

12. It is the case of the petitioner that post-recruitment, he has reached through the promotional channel to the post of Manager (MM-II Level). In view of the defaults, as alleged, a departmental enquiry pursuant to Regulation 6 of the Regulations of 1976 was initiated and post-enquiry, report was submitted by the Enquiry Officer on 25th July, 2018. It is the case of the petitioner that the Enquiry Officer has not recommended any punishment. However, the Management has decided to dismiss the petitioner from service by order dated 31st October, 2018. The dismissal of the petitioner was considered to be a disqualification for future employment.

13. The petitioner-employee, feeling aggrieved, preferred an appeal under Regulation 17 of the Regulations of 1976 on 26th December, 2018 and the said appeal was dismissed by the impugned order

dated 16th April, 2019. It is the contention that the appeal is required to be decided pursuant to Regulation 17 of the Regulations of 1976. Even if in the said Regulation there is no express provision for grant of opportunity of personal hearing, such opportunity is in-built, as the impugned order is penal in nature, as the petitioner is penalized in the form of confirming the order of dismissal, which will act as an embargo in future for getting the employment.

14. No doubt, plain reading of Regulation 17 of the Regulations of 1976, as reproduced hereinabove, in express terms does not speak of the notice or opportunity of hearing to be granted to the petitioner. However, it empowers the Appellate Authority to consider whether the reasons and the findings recorded in the order of dismissal in the form of punishment imposed on the petitioner on 31st October, 2018 can be justified and also whether the enquiry conducted was just and proper. The said Regulation also empowers the Appellate Authority to determine whether the penalty is excessive or inadequate and as such the Appellate Authority is clothed with the statutory power of entertaining an appeal and deciding the same. The fact remains that even if there is no in-built provision of notice of hearing and grant of personal hearing by the Appellate Authority, we are required to be sensitive to the repercussion of such order of the Appellate Authority. The Apex Court has time and again held that the personal hearing must be afforded by the Appellate Authority to the delinquent – whether the Appellate Authority confirms or modifies the order. If we see the very duty

cast on the Appellate Authority pursuant to the provision of Regulation 17 of the Regulations of 1976, referred above, the Appellate Authority is required to consider as to whether the procedure laid down in the relevant Regulation has been adhered to and non-compliance thereof has resulted in causing substantial prejudice. The Appellate Authority is also required to find out whether the order appealed reflects application of mind and also reasons recorded in support of the final conclusion.

15. Merely because there is no express provision in the Regulations of 1976, particularly Regulation 17 thereof, that by itself will not act as an embargo on the right of the petitioner to claim that he should not be heard in the matter.

16. In our view, we are supported by the judgments of the Division Bench of this Court in the matters of *Anil Amrut Atre Vs. District and Sessions Judge, Aurangabad*, reported in *2002(3) Mh.L.J. 750*, so also *Dinkar Rajaram Sarap*, cited supra.

17. As such, the impugned order dated 16th April, 2019 passed by the respondent No.1-Appellate Authority is without issuing the notice of hearing to the petitioner so also without granting an opportunity of personal hearing and as such can be said to be in violation of the principles of natural justice guaranteed under Article 14 of the Constitution of India. That being so, the impugned order dated 16th April, 2019 passed by the respondent No.1-Appellate Authority is not sustainable.

18. In the result, the writ petition is allowed in terms of prayer clause (i). We deem it appropriate to direct the restoration of appeal to the respondent No.1-Appellate Authority, before whom the petitioner must appear on 21st April, 2025. The Appellate Authority thereafter shall grant an opportunity of personal hearing to the petitioner and pass an appropriate order within a period of eight weeks from the date of appearance of the petitioner before the Appellate Authority.

19. Rule is partly made absolute. No costs.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)