

(1997) 10 KAR CK 0029

Karnataka High Court

Case No: Writ Petition No. 6826 of 1990

Radhakrishna Setty

APPELLANT

Vs

Deputy General Manager
(Disciplinary Authority), Indian
Overseas Bank, Central Office,
Madras and Another

RESPONDENT

Date of Decision: Oct. 24, 1997

Acts Referred:

- Indian Overseas Bank Officers Employees Discipline and Appeal Regulations, 1976 - Regulation 6 (6)

Citation: (1998) 79 FLR 39 : (1998) ILR (Kar) 897 : (1998) 2 KarLJ 643

Hon'ble Judges: H.L. Dattu, J

Bench: Single Bench

Advocate: Sri P.S. Rajagopal, for the Appellant; Sri Subba Rao and Sri B.C. Prabhakar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. Petitioner was an officer of Indian Overseas Bank. He was dismissed from service by an order dated 22-2-1989 by the Disciplinary Authority, which order has been confirmed in appeal by the Appellate Authority. It is these orders which have brought the petitioner before this Court, aggrieved by the same.

2. In order to appreciate the nature of the controversy between the parties, it is necessary to note a few background facts. They are:

Petitioner was serving in the respondent-Indian Overseas Bank as Manager. While working in Kannalu Branch of the Bank, he was served with a charge memo dated 28-3-1987 containing charges of misconduct. Petitioner submitted his explanation to the charge memo. Not being satisfied with the explanation offered by the petitioner, an Inquiry Officer came to be appointed to enquire into the charges of misconduct.

Management did not choose to appoint a Presenting Officer. Delinquent brought this aspect of the matter before the Inquiry Officer, who overruled this objection and proceeded to conduct the enquiry. After completion of the enquiry, the Inquiry Officer submitted his report together with the records of the enquiry proceedings to the Disciplinary Authority. That after considering the report of the Inquiry Officer and records of the proceedings, the Disciplinary Authority passed an order dated 22-2-1989 dismissing the petitioner from services of the Bank, which order has been affirmed in appeal also.

3. Sri P.S. Rajagopal, learned Counsel for the petitioner contended that sub-regulation (6) of Regulation 6 of the Indian Overseas Bank Officers Employees' Discipline and Appeal Regulations, 1976, provides that where the Disciplinary Authority itself inquires or appoints an Inquiry Officer for holding an enquiry, it may by an order appoint a public servant to be known as the Presenting Officer to present on its behalf the case in support of the articles of charge and the expression "may" should be read as shall and failure to appoint a "Presenting Officer" would vitiate the entire enquiry proceedings.

4. Sri M. Subha Rao, learned Counsel for contesting respondent Bank on the other hand submitted that the use of the word "may" in sub-regulation indicates that the appointment of the "Presenting Officer" is not mandatory but only directory and failure to appoint "Presenting Officer" by the Disciplinary Authority would not itself vitiate the enquiry proceedings.

5. The use of the expression "may" in the sub-regulation having regard to the context in which it is used, in my view, cannot be read as containing mandatory direction to the Disciplinary Authority to appoint the Presenting Officer to present on its behalf the case in support of the articles of charge. It is used purely as permissive and does not make obligatory upon the Disciplinary Authority to exercise the power and appoint a Presenting Officer in all domestic enquiry proceedings. In view of that, mere failure to appoint a Presenting Officer would not itself vitiate the enquiry.

6. A similar provision came up for construction before this Court in the case of *Gopala Krishna Raju v State of Karnataka*. The Court was pleased to hold that no infirmity would be caused if a Presenting Officer is not appointed in a disciplinary proceedings and the enquiry becomes invalid only if the Inquiry Officer functions also as the Presenting Officer and cross-examines the defence witnesses.

7. In the circumstances, once it is found, on the construction of sub-regulation that requirement to appoint Presenting Officer is not mandatory provision, it cannot be said that the failure to appoint a Presenting Officer would vitiate the proceedings and render the inquiry illegal and void unless petitioner establishes that he was prejudiced by the failure to appoint a Presenting Officer and the Inquiry Officer was exposed to bias. Hence, the contention raised by learned Counsel is rejected.

8. The next contention raised by learned Counsel for the petitioner is that the Inquiry Officer acted both as a Prosecutor and a Judge and in that, it was strenuously argued that in the absence of Presenting Officer, the Inquiry Officer had put leading question to the management witnesses and had cross examined the defence witnesses and made several suggestions which would clearly indicate the biased mind of the Inquiry Officer and therefore, the proceedings stand vitiated. It was further contended that the Inquiry Officer could not have cross examined the defence witnesses in view of specific prohibition envisaged under sub- regulation (16) of Regulation 6 of the Discipline and Appeal Regulations, 1976. It is therefore contended that there was no fair trial and the proceedings was opposed to rules of natural justice. On behalf of respondent, it was contended that merely because the Inquiry Officer had put certain questions and merely because he had cross examined defence witnesses, it cannot be said that the disciplinary proceedings are vitiated and therefore, they are illegal or void. In support of this contention, learned Counsel relied upon the observations made by Supreme Court in [Mulchandani Electrical and Radio Industries Ltd. Vs. The Workmen](#), .

9. In Mulchandani's case, supra, the management was not represented. In that case, one Ashok Bhambani who was operator in the Company assaulted one Ramesh Thadani. A charge-sheet and an enquiry followed. Ashok Bhambani was dismissed from service. A dispute was raised before the Labour Court. One of the findings of the Labour Court was that the Enquiry was not fair. The Labour Court had held that the enquiry officer -- "had no business to treat the company's witnesses Anand Bhana and Mohan Shahani as hostile witnesses on his own and to ask questions for proving the misconduct alleged against the delinquent employee. The Labour Court after setting aside the punishment imposed directed reinstatement of the workmen. Aggrieved by this order, the management approached the Supreme Court. The Supreme Court noted that the contents in the memorandum submitted by the employees of the company to the company conflicted with what was deposed by the two witnesses Anand Bana and Mohan Shahani. The Supreme Court felt that it was reasonable and necessary to look for some explanation for the contradictory statements. Therefore, the Supreme Court held that if the Inquiry Officer had put certain questions to those witnesses by way of clarification, it could not he said that he had done something that was not fair or proper. The Supreme Court pointed out that after the Inquiry Officer had questioned the witnesses, they were subjected to be cross- examined on behalf of the union and therefore, the Supreme Court held that enquiry was not vitiated.

10. Keeping in view the observations made by the Supreme Court, the questions that require to be considered in the instant case are: Whether the Inquiry Officer in the absence of Presenting Officer could have put questions and got marked the documents from the management witnesses; secondly, whether he could have cross-examined the defence witnesses and the delinquent; and thirdly, whether the attitude of the Inquiry Officer was indicative of impartiality and fairness which is one

of the essential ingredients of natural justice.

11. For me, it looks that the entire domestic enquiry was biased and tainted with partiality and unfairness. In a departmental proceedings the Inquiry Officer is an important person. When he is the key person, on him depends whether the enquiry would be fair or impartial. No doubt, the Inquiry Officer does not function like a Court and its proceedings also cannot be equated with the proceedings of the Court. Further strict rules of Evidence Act would not apply to its proceedings but certainly the principles which are based on the rules of natural justice would definitely apply. Certainly the Inquiry Officer may obtain all information, material for the points under enquiry from all sources and through all channels without being fettered by rules and procedure which govern the proceedings in the Court. The only obligation which the law casts upon them while eliciting the truth cannot go beyond his limit as an Inquiry Officer and play the role of a Prosecutor giving an indication that he was not fair and that he was biased. The Supreme Court in the case of [Meenglas Tea Estate Vs. Its Workmen](#), has laid down that if the Inquiry Officer also acts as a Prosecutor or witness then there is clear violation of rules of natural justice and his findings are liable to be set aside.

12. In the present case, the Inquiry Officer himself had questioned the management witnesses and got all the documents marked in support of the allegations in the charge memo. After closing his "Examination-in-Chief" and the cross-examination of the witnesses by the defence representative, re-examines the witnesses which he characterises as "clarification". What is much more strange is that he goes beyond his scope to cross-examine the witnesses of the delinquent officer and assumes the role of Presenting Officer and a Prosecutor. This is evident from the cross-examination of the defence witnesses. While cross-examining by putting leading questions gives an impression that he was playing dual role that of an Inquiry Officer and the role of a Prosecutor. The allegation in the charge memo was that the delinquent had sanctioned, as a Manager of Kannalu Branch of the respondent Bank, 20 crop loans to fictitious names and the proceeds were availed for his own benefit. Secondly, delinquent had granted loans to about 28 borrowers without verifying genuineness of land records which are found later to be forged and lastly, had granted loans to 12 parties who are all from village not covered under the command area of the branch and that "no due" certificates were not insisted upon and that the borrowers had already availed loans from other banks/branches of Indian Overseas Bank and were defaulters. To prove these charges, in the absence of Presenting Officer, the Inquiry Officer was appointed to inquire into charges of misconduct by the delinquent officer. Assuming the role of a Prosecutor not only the Inquiry Officer conducts chief examination of the witnesses but proceeds to ask leading questions. While cross-examining the defence witnesses not only he tries to tell them that their statements are wholly unbelievable but also tries to impute motives to them. The tenor of cross-examination conducted by the Inquiry Officer clearly suggests that the Inquiry Officer was biased and had

determined to find the delinquent guilty of the charge. Before coming to this conclusion, I have perused the deposition recorded which have been produced along with writ petition and marked as Annexure-C1 to C16. It is not a case where the Inquiry Officer when he is not assisted by a Presenting Officer, has put a few questions may be in the nature of cross-examination, may be of leading ones, which by itself would not have been in violation of natural justice. But here is a case where the Inquiry Officer has conducted cross-examination and has put such leading questions to the witnesses indicating clearly that he has not merely acted as Inquiry Officer but went beyond his limits as such and played the role of a Prosecutor. The dual role he played in the enquiry proceedings would definitely demonstrate that he was not fair and also was biased. I, therefore, hold on the facts and circumstances of this case, that the conduct of the enquiry in the absence of Presenting Officer by the Inquiry Officer as if he was the Presenting Officer is clearly opposed to the maxim "fair play in action" and opposed to rules of natural justice. When the Inquiry Officer is biased and partial, any report submitted by him would suffer from illegality and the action taken by the Disciplinary Authority basing on such report and the finding cannot stand on its own and necessarily deserves to be quashed as not in conformity with rules of natural justice and fair play in action.

13. For the reasons stated, the impugned order made by the Disciplinary Authority dated 27-2-1989 and confirmed by the Appellate Authority by its order dated 17-7-1989 are quashed. However, liberty is reserved to the respondent-Bank to proceed if they so desire from the stage of recording of evidence or even from the stage of appointing a Presenting Officer as contemplated under sub-regulation (6) of Regulation 6 of Indian Overseas Bank Officers Employees' Discipline and Appeal Regulations, 1976. Since the order of dismissal from service is set aside by me, a direction is issued to the respondent-Bank to reinstate the petitioner into service and thereafter proceed with the inquiry from the stage the defect is noticed by this Court either by placing the petitioner under suspension or continuing him in service. The backwages and other benefits from the date of dismissal till the date of reinstatement into service will depend on the final outcome of the inquiry that may be continued by the respondent-Bank. All these aspects are to be governed as indicated by the Supreme Court in Managing Director, ECIL, Hyderabad v B. Karunakar.

14. With these observations and direction, writ petition is disposed off. Rule made absolute. No order as to costs.