

(2002) 02 BOM CK 0123

Bombay High Court

Case No: Writ Petition No. 319 of 1989

Goalkrishna Vaman Kamath

APPELLANT

Vs

The Corporation Bank

RESPONDENT

Date of Decision: Feb. 11, 2002

Acts Referred:

- Corporation Bank Officers Employees (Discipline and Appeal) Regulations, 1982 - Regulation 7(2)

Citation: (2002) 3 ALLMR 473 : (2002) 3 BomCR 506 : (2002) 95 FLR 136 : (2002) 2 MhLj 876

Hon'ble Judges: P.S. Patankar, J; D.B. Bhosale, J

Bench: Division Bench

Advocate: N.M. Ganguli, for the Appellant; R.S. Pai, for the Respondent

Final Decision: Allowed

Judgement

D.B. Bhosale, J.

This writ petition challenges an order dated 13th May, 1998 passed by the Appellate Authority constituted under the provisions of the Corporation Bank Officers Employees (Discipline and Appeal) Regulations, 1982, to dispose of the appeals assailing the orders passed by the Appellate Authority. By the impugned order, the appellate authority has affirmed the order dated 14th November, 1997 passed against the petitioner, holding him guilty of misconduct by the Disciplinary Authority.

2. The petitioner at the relevant time was working as Manager at Chembur, Bombay Branch, of respondent Corporation Bank. He was there between the period from 4th June, 1983 and 1st December, 1984. During this period, the petitioner allegedly committed misconduct. The Article of Charge was framed against him and he was served with a charge-sheet with covering letter dated 26th March, 1986, calling upon him to submit his written statement within a period of 15 days from the date of the receipt of the said letter. The petitioner claims to have received the

chargesheet on 4th April, 1986. Three charges were framed against the petitioner. During the enquiry, the enquiry officer framed points for determination by which he divided three charges into 13 points for the sake of convenience, viz. points 1.0 to 1.3, 2.1 to 2.7, 3.0 and 3.1. The enquiry was held between 18th September, 1986 to 18th March, 1987. Thereafter the enquiry officer submitted his report and findings to the disciplinary authority. Insofar as charge No. 3.1 is concerned, according to the petitioner, it is an additional charge that is framed by the enquiry officer during enquiry and held to be proved.

3. On the basis of the material produced, the enquiry officer came to the conclusion that except charge Nos. 1.2, 2.1, 2.4, 2.7 and 3.0 other charges are fully proved. As far as charge No. 2.1 is concerned, the enquiry officer came to the conclusion that the said charge has been partly proved. In so far as charge No. 2.6 is concerned, the burden was put on the petitioner to prove his defence that the loans were sanctioned under mass loaning scheme under pressure. The enquiry officer held that the petitioner failed to prove his defence and, therefore, that charge is answered in negative.

4. On receipt of the findings of the enquiry officer, the disciplinary authority re-examined the material and did not agree with the conclusion of the enquiry officer on the charges 1.2, 2.1, 2.4, 2.7 and 3.0. The disciplinary authority, on the other hand, came to the conclusion that the charge Nos. 1.2, 2.1, 2.4, 2.7 and 3.0 must be held to have been fully proved and taking into account the gravity of the charges, the disciplinary authority inflicted the major punishment, viz. penalty of dismissal. The petitioner has assailed the order passed by the appellate authority and the findings recorded by the enquiry officer in the instant petition and prayed for reinstatement with full back wages and all attendant benefits including promotional benefits.

5. Mr. Ganguli, learned counsel for the petitioner, at the outset, invited our attention to the decision of the Apex Court in the case of Punjab National Bank and Ors. v. Kunj Behari Misra, reported in AIR 1988 SC 2713, and contended that whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own finding on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its finding. There is no dispute that such an opportunity was not offered to the petitioner before the disciplinary authority recorded its disagreement with the enquiring authority on the charge Nos. 1.2, 2.1, 2.4, 2.7 and 3.0. In support of his submission, Mr. Ganguli, invited our attention to regulation 7(2) of the Officers Employee's (Discipline and Appeal) Regulations, 1982, which reads thus :--

"(2) The Disciplinary Authority shall if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the

purpose."

He submitted that the same rule was before the Supreme Court in the case of Punjab National Bank (supra). In the report, the Apex Court while interpreting rule 7(2) held that the principles of natural justice have to be read into regulation 7(2). The rule quoted in the judgment and the rule on which reliance is placed by Mr. Ganguli is identical. Paras 19 and 20 of the report in the case of Punjab National Bank (supra) reads thus :--

"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent, before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file representation before the disciplinary authority records its findings on the charges framed against the officer."

20. The aforesaid conclusion, which we have arrived at, is also in consonance with the underlying principle enunciated by this Court in the case of [Institute of Chartered Accountants of India Vs. L.K. Ratna and Others](#), . While agreeing with the decision in Ram Kishan's case, AIR7995 SCW 4027 we are of the opinion that the contrary view expressed in S.S. Koshal, AIR1994 SCW 2901 and M. C. Saxena's case, 1998 AIR SCW 965 (supra) do not lay down the correct law."

The same view has been reiterated by the Apex Court in the case of State Bank of India and Ors. v. Arvind K. Shukla reported in AIR2007 SCW 2472. The relevant portion of para 2 of the report reads thus :--

"2. Mr. Sundravardan, the learned senior counsel appearing for the State Bank of India contended before us that in the case in hand, in fact, there has been no disagreement with the findings of the enquiring officer by the disciplinary authority, and on the other hand, the disciplinary authority on the accepted findings of the enquiring officer has recorded his conclusion differently on the basis of the relevant provisions of the rules, and therefore, the question of giving an opportunity to the delinquent at that stage does not arise. To appreciate this contention, we have been taken through the findings of the enquiring officer and charges 1(a) and 1(d) as well as the reasonings and ultimate conclusion of the disciplinary authority on those two charges. On examining the same, we are not persuaded to accept the submission of the learned counsel and in our view, the disciplinary authority has disagreed with

the conclusion and findings arrived at by the enquiring officer. The next question therefore is, as has been formulated earlier, whether the disciplinary authority was required to record its tentative reasons for disagreement and give to the delinquent officer an opportunity to represent before it recorded its ultimate findings. This question is concluded by a 3-Judge Bench decision of this Court in the case of [Punjab National Bank and Others Vs. Sh. Kunj Behari Misra](#), ." In view of this, the law is well settled that when the disciplinary authority disagrees with the conclusion and findings arrived at by the inquiring officer, the disciplinary authority is required to record its tentative reasons for disagreement and give to the delinquent officer an opportunity to represent before it records its ultimate finding. The principles of natural justice have, therefore, to be read into regulation 7(2).

6. Besides, Mr. Ganguli also invited our attention to regulation 6(18), Regulation 6(18) read thus :--

"6(18) The Inquiring Officer may, after the completion of the production of evidence, hear the Presenting Officer, if any appointed, and the Officer employee or permit them to file written briefs of their respective cases within 15 days from the date of completion of the production of evidence. If they so desire."

He submitted that the inquiring authority may, after completion of production of evidence, hear the presiding officer, if any appointed, and the officer employee or permit them to file written brief of the respective cases within 15 days from the date of completion of evidence if they so desire.

7. In view of this, the petitioner had addressed a letter dated 29th July, 1987 to the enquiry officer expressing his difficulties in getting his written brief ready and also sought assistance for the typing facility. He expressed in the letter that by denying typing facility, the enquiry officer is causing financial loss to the petitioner like cost of papers and stationery. In the alternative he also requested to allow him to make oral submission which enquiry officer could record. We perused the said letter and the report of the enquiry officer and found that the enquiry was concluded without allowing the petitioner to make his oral submission or to present his written brief. We do not want to get involved as to whether the delinquent was in wrong or the enquiry officer while conducting the enquiry did not follow the procedure. In view of our observations in the foregoing paragraphs based on the judgment of the Punjab National Bank (supra) we are inclined to quash and set aside the report of the enquiry officer as well as the order passed by the appellate authority. It would be open for the petitioner to give his written brief during the course of the enquiry after remand.

In the result, the petition is allowed. The impugned order made by the Appellate Authority dated 13th May, 1988 and the report of the enquiry officer dated 13th August 1987 are quashed and set aside and the matter is remanded to the enquiry officer to conduct the enquiry from the stage of completion of production of

evidence as contemplated under regulation 6(18) and conclude the same within a period of three months from the first date of hearing. Insofar as backwages and other benefits from the date of dismissal till the date of reinstatement is concerned, they will depend upon the final outcome of the enquiry that may be continued by the respondent-Bank. All contentions of both the parties are left open.

8. Mr. Pai, learned counsel for the Respondents, on instructions states that the Petitioner would be reinstated within a period of two weeks from today and he shall be retained in Mumbai till the completion of enquiry.

9. The learned counsel for the petitioner, on instructions, states that the petitioner shall co-operate with the enquiry and he shall file written submissions within a period of one month from today.

10. Needless to say that if the same enquiry officer who recorded the evidence is not available, for any reason, it would be open for the respondent Bank to appoint any other officer in accordance with the provisions of the said Regulations.

Rule is made absolute in the above terms.

Parties and the authority to act on the authenticated copy of this order which may be made available to the parties.