

***THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

+W.P. No.7402 OF 2018

% 25-01-2024

S. Ramchander Rao

....petitioner

Vs.

\$ Union Bank of India and two others

.... Respondents

! Counsel for the petitioner : Sri P.V. Ramana

Counsel for the Respondents : Dr. K. Laxmi Narasimha

<Gist :

>Head Note:

? Cases referred:

1. 1995 SCC(6) 749
2. MANU/SC/0110/2003

IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD

* * * *

W.P. No.7402 OF 2018

Between:

S. Ramchander Rao

...Petitioner

And

Union Bank of India and two others

... Respondents

ORDER PRONOUNCED ON: 25.01.2024

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : Yes

NAMAVARAPU RAJESHWAR RAO, J

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

WRIT PETITION No.7402 of 2018

ORDER:

This writ petition is filed by the petitioner seeking the following relief:

“...to issue a Writ order or direction, more particularly one in the nature of Writ of Mandamus, declaring the impugned order passed by the Respondent No. 2 Dt.30.11.2017 as arbitrary, illegal, irrational, unilateral and violation of Article 14 of the Constitution of India, and pass such other order...”

2. The brief facts of the case are that the petitioner was working with the Respondent bank as an Assistant General Manager. The petitioner had been placed under suspension on 28.07.2014, and a chargesheet dated 28.10.2016 was issued to him along with two annexures detailing the articles of charge and the list of loans approved by the petitioner while he was working as the Chief Manager of the Gudivada Branch. The

petitioner was called for a domestic enquiry, which was conducted on 14.02.2017, and the findings of the domestic enquiry were issued to the petitioner vide a letter dated 24.07.2017. Based on the said enquiry report, the 3rd respondent, General Manager (HR) & Disciplinary Authority, Andhra Bank, issued orders for dismissal of the petitioner from service under Regulation 4(j) of Andhra Bank Officer Employees' (Dismissal & Appeal) Regulations vide a letter Lr. No. 666/20/V/T-1568/430, dated 21.08.2017. The petitioner, aggrieved by the above order, preferred an appeal to the 2nd respondent, The Executive Director and Appellate Authority, who, after perusing the evidence available on record, upheld the decision of the 2nd respondent, vide a speaking order dated 30.11.2017, which is the impugned order herein.

3. The learned counsel for the petitioner has submitted that the order passed by the 2nd Respondent dated 30.11.2017 is illegal, owing to procedural lapses and violation of the principles of natural justice. He further submitted that the respondent bank should treat the period from the date of his

suspension to the date of his retirement, as on duty with all consequential benefits.

3(1) Learned counsel for the petitioner further submitted that the allegations against the petitioner pertain to his tenure as the Chief Manager of the Gudivada Branch of the respondent bank, where he served from May 2008 to June 2011. The petitioner was later promoted as an Assistant General Manager in the respondent bank in 2011 and was posted to the Chandigarh Zonal Office before being placed under suspension. He further submits that the petitioner had been serving in the respondent bank since 1980 and his long service has been acknowledged by his promotion as an Assistant General Manager.

3(2) It is contended by the learned counsel for the petitioner that the respondent bank had violated the procedural norms meant for delinquent officers to conduct the inquiry, and imposed a major penalty of 'dismissal from service', that too without any pensionary benefits. He further contended that the dismissal order was passed by the 2nd respondent on

21.08.2017 and was received by the petitioner on 27.08.2017, and the same was ordered just ten days before his retirement, which was due on 31.08.2017. He contended that the suspension order was bad in law as the same had been issued without the issuance of any show-cause notice and without seeking an explanation from the petitioner. He further contended that the suspension was ordered after a lapse of nearly three years from the transfer of the petitioner from the Gudivada Branch. Thus, this shows that the respondent authorities had a prejudiced mind while dealing with the petitioner's case.

3(3) It has also been contended by the learned counsel for the petitioner that the show-cause notice was issued after a long delay of six months from the date of his suspension, which vitiates the entire disciplinary proceedings. He also contended that the respondent authorities arbitrarily conducted the proceedings within two days and that his pleadings were not given a proper hearing. He further claimed that throughout his tenure as the Chief Manager of the Gudivada Branch, the Zonal Branch was kept notified about all the PAGCC loan accounts

with regards to which the charge memo was issued to the petitioner. He further contended that the petitioner has been singled out for what essentially is a collective responsibility of the Branch Manager and the Zonal Branch. No evidence was filed on behalf of the respondent bank stating that the Zonal Branch had communicated about any non-compliance or due diligence concerning the petitioner during his tenure.

4. Per contra, the learned Standing Counsel for the Respondent Bank contended that the charges against the petitioner were established after the due process, and the petitioner was not eligible to claim any monetary benefits because his delinquencies were upheld by the Appellate Authority. He submitted that the issue of show-cause notice after the order of suspension is not a procedural lapse and that there are precedents where such issue of show-cause notice has been done after the preliminary findings were established. He further contended that the branch manager is the authorized person to ensure that the loans which are disbursed, are done with diligence and in accordance with the established process. Several PAGCC loans were granted

without following any procedure, and the same have been highlighted very specifically in both the charge memo and the disciplinary proceedings.

4(1) Learned Standing Counsel for the Respondent Bank further contended that loans disbursed for the establishing fish tank units were diverted to third parties. The petitioner ought to have ensured the end usage of funds by the borrowers, which he did not do. The delinquency of the petitioner led to the slipping of several loan accounts into NPA's. Many of these loans were obtained by impersonation, and no KYC norms were adhered to with regard to such loan accounts. As such, the petitioner exposed the bank to huge financial risk. Thus, the severe nature of the delinquencies of the petitioner warranted the highest punishment of dismissal from service, and the application of Regulation 4(j) of the Andhra Bank Officer Employees' (Dismissal & Appeal) Regulations was appropriate in the given case.

5. Per contra, learned counsel for the petitioner submitted that the entire disciplinary proceedings stood vitiated as the procedure laid down in Rule 6 of the Regulations was not

adhered to, and the 2nd Respondent failed to address the said lapse in the appellate proceedings. He contended that the respondent bank should have framed definite and distinct charges in accordance with Regulation 6(3) of the Andhra Bank Officer Employees' (Dismissal & Appeal) Regulations and the same had to be issued to the petitioner before the commencement of the disciplinary proceedings. It was also contended by the learned counsel for the petitioner that the Enquiry Officer and the disciplinary authority ought to have considered the objections raised by the petitioner before the imposition of a major penalty, which was not done in the present case.

6. Perused the records and heard the learned counsel for the petitioner Sri P.V. Ramana, and Dr. K. Lakshmi Narasimha, the learned Standing Counsel for the respondent bank.

7. At the outset, it is very pertinent to mention that the scope for interference by this court in disciplinary proceedings is limited to the extent of looking into any illegality, failure to adhere to the rules or a gross violation of natural justice which may have been committed by the authorities concerned. It is

also to be examined whether a violation of the rules which govern such proceedings has been brought to the notice of this court. The Hon'ble Apex Court in the case of **B.C. Chaturvedi vs Union Of India And Ors**¹, had observed the following:

“Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the

¹1995 SCC (6) 749

delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re- appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

It further observed:

“ The disciplinary authority is the sole judge of facts. Where appeal is presented. The appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 781], this Court held at page 728 that if the conclusion, upon

consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.”

In **Chairman & Managing Director, United Commercial Bank and Ors. vs. P.C. Kakkar**², the Hon’ble Apex Court held as follows:

“ 7. Lord Greene said in 1948 in the famous Wednesbury case (1948 (1) KB 223) that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. He said that interference was not permissible unless one or the other of the following conditions was satisfied, namely the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered; or the decision was one which no reasonable person could have taken. These principles were consistently followed in the UK and in India to judge the validity of administrative action. It is equally well known that in 1983, Lord Diplock in Council for Civil Services Union v. Minister of Civil Service [(1983) 1 AC 768] (called the CCSU case) summarized the principles of judicial review of administrative action as based

upon one or other of the following viz., illegality, procedural irregularity and irrationality. He, however, opined that "proportionality" was a "future possibility" ”

It then stated the questions which a writ court may confine itself to:

“8.But where an administrative action is challenged as "arbitrary" under Article 14 on the basis of Royappa (1974) 4 SCC 3 (as in cases where punishments in disciplinary cases are challenged), the question will be whether the administrative order is "rational" or "reasonable" and the test then is the Wednesbury test. The courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary. In G.B. Mahajan v. Jalgaon Municipal Council (1991) 3 SCC 91 at p. 111 Venkatachaliah, J. (as he then was) pointed out that "reasonableness" of the administrator under Article 14 in the context of administrative law has to be

judged from the stand point of Wednesbury rules. In Tata Cellular v. Union of India (1994) 6 SCC 651 at pp. 679-80), Indian Express Newspapers Bombay (P) Ltd. v. Union of India (1985) 1 SCC 641 at p.691), Supreme Court Employees' Welfare Assn. V. Union of India (1989) 4 SCC 187 at p. 241) and U.P. Financial Corpn. V. Gem Cap(India) (P) Ltd. (1993) 2 SCC 299 at p. 307) while judging whether the administrative action is "arbitrary" under Article 14 (i.e. otherwise than being discriminatory), this Court has confined itself to a Wednesbury review always."

8. It is clear from the above judgments that when an administrative action is challenged before a Writ Court, the validity of such an action is to be confined to the Wednesbury Test, namely:

- a) Was the order contrary to law?
- b) Were relevant facts not considered, or were irrelevant facts considered by the disciplinary authority?
- c) Was the decision one that no reasonable person could have taken?

Therefore, the question before this court is whether the 2nd and 3rd respondents adhered to the Andhra Bank Officer Employees' (Discipline And Appeal) Regulations, 1976, while conducting the disciplinary proceedings and whether all the

relevant facts were considered while doing so, and whether there was reasonable application of the mind while passing the said impugned order.

9. With regard to the suspension order, The Andhra Bank Officer Employees' (Discipline And Appeal) Regulations, 1976 lay down the conditions in which an officer employee may be placed under suspension. Regulation 12(1) of the same reads as follows:

“12. SUSPENSION : 1) An Officer Employee may be placed under suspension by the Competent Authority;

*(a) Where disciplinary proceedings against him is **contemplated** or is pending; or*

(b) Where a case against him in respect of any criminal offence is under investigation, inquiry or trial.”

A plain reading of Regulation 12(1)(a) shows that the competent authority is well within its discretion to place an officer employee under suspension, even when there is an enquiry which is being contemplated. This shall, by default, include any enquiry which has not commenced as on the date of the suspension order. When there is a 'prospective enquiry'

being contemplated against an officer employee, the bank may place the said employee under suspension. There is no obligation placed on the competent authority under the said Regulations to issue a show-cause notice to the employee as a pre-requisite for placing him under suspension. As such, this Court finds no arbitrariness or illegality in the suspension order issued by the 3rd Respondent dated 28.07.2014.

10. Regulation 6(3) of the Andhra Bank Officer Employees' (Discipline And Appeal) Regulations, 1976 states as follows:

“(3) Where it is proposed to hold an inquiry, the Disciplinary Authority shall frame definite and distinct charges on the basis of the allegations against the Officer Employee and the Articles of Charge, together with a Statement of the allegations, list of documents and list of witnesses alongwith copy of statement of witnesses, if any, on which they are based, shall be communicated in writing to the Officer Employee, who shall be required to submit, within such time as may be specified by the Disciplinary Authority (not exceeding 15 days) or within such extended time as may be granted by the said Authority, a written statement of his defence. “Provided that wherever it is not possible to furnish the copies of documents, Disciplinary Authority shall

allow the officer employee inspection of such documents within a time specified in this behalf;”

11. It is to be noted that the petitioner was issued a letter dated 24.01.2015, around six months after he was suspended, calling for an explanation for the irregularities in PAGCC loans (Fish Tanks) in the Gudivada Branch. Subsequently, the petitioner was issued a charge-sheet vide a letter dated 28.10.2016. The domestic enquiry was conducted on 14.02.2017, and the findings were issued to the petitioner on 24.07.2017. This Court is of the considered view that adequate time had been given to the petitioner to make his submissions, even before the chargesheet was issued, and later, before the enquiry officer. Further, the annexures to the charge-sheet contained a detailed statement of allegations, a list of documents and the loan accounts in question, and the same were provided to the petitioner. As such, this court finds no merits in the argument of the learned counsel for the petitioner that ‘*definite and distinct charges*’ as per Regulation 6(3) were not framed, and that the statement of allegations are mere imputations.

12. It is also contended by the learned counsel for the petitioner, concerning the report of the enquiry officer, that he has also dealt with an allegation No.8, which was not a part of the show-cause notice issued by the Respondent No.2, which means that the enquiry officer has travelled beyond the chargesheet and thus, was biased and prejudiced against the petitioner.

Allegation No. 8 of the enquiry report reads as follows:

“The above omissions and commissions on the part of the officer clearly indicate that he failed to discharged his duties. All the accounts slipped to NPA and the bank is exposed to huge financial risk/loss.”

A plain reading of the allegation shows that it is merely a summation of the earlier allegations and it only states in very generic terms, the nature of allegations against petitioner. There is no new charge made out against the petitioner. With regards to the aforementioned contention, this Court also finds it pertinent to mention Rule 6(14) of the Andhra Bank Officer Employees' (Discipline And Appeal) Regulations, 1976, which reads as follows:

“Before the close of the case, in support of the charges, the Inquiring Authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the charge sheet or may itself call for new evidence or recall or re-examine any witness. In such the Officer Employee shall be given opportunity to inspect the documentary evidence before it is taken on record, or to cross-examine a witness, who has been so summoned. The Inquiring Authority may also allow the Officer Employee to produce new evidence if it is of the opinion that the production of such evidence is necessary in the interest of justice.”

Therefore, there is no bar for an inquiring authority to bring about a new charge, if it so deems to be appropriate. It is also observed that at no stage of the enquiry, the petitioner took any objection to the same. As such, this court finds no merit in the contention of the learned Counsel for the petitioner.

13. The 2nd Respondent issued the dismissal order vide a letter dated 21.08.2017, and the petitioner preferred an appeal before the appellate authority on 25.09.2017, which was also rejected vide the impugned order. A perusal of the impugned

order dated 30.11.2017 brings forth the following observations of the 2nd respondent:

- i. It found that there is a mismatch of land records with regards to the primary securities in the Bhoomi Portal.
- ii. It found that the petitioner had resorted to the unfair practice of sanctioning loans just below Rs.50 lakhs to avoid reference to Zonal Office and to sanction loans under the delegated powers of the Branch.
- iii. It found that the KYC compliance and due diligence of the borrowers and co-obligants were not conducted properly, which is a major violation of the procedural norms. It further states that a few loans were obtained through impersonation, and the same has been affirmed by the expert opinion of the CFSL.
- iv. It also found that the petitioner failed to ensure the end use of funds and has found that the loan proceeds have gone to the account of third parties and the same were utilized for other than the sanctioned purpose.

14. The appellate authority has given detailed reasons for each of the aforementioned observations, and as such, the

contention of the learned counsel for the petitioner that the impugned speaking order did not mention the reasons for the rejection of the appeal cannot be sustained. The Wednesbury standards would dictate that the administrative body would be the sole determinant of the facts and the nature of evidence which were relied upon to conduct the disciplinary proceedings. It is pertinent to note that the list of documents relied upon to frame the charges, were official bank records which included process notes, sanction letters, Imperial Asset Study (I.A.S.) Reports and a Special Audit Report dated 10.01.2015. Therefore, this court is of the considered view that the disciplinary proceedings were conducted in accordance with the Andhra Bank Officer Employees' (Discipline And Appeal) Regulations, 1976, and there was no procedural lapse while conducting the same.

15. The contention of the learned counsel for the petitioner that the enquiry proceedings were conducted with a prejudiced mind does not stand ground. It may have been a possibility, had the 3rd Respondent enquiry officer plainly reproduced the charge memo while passing the dismissal order dated

21.08.2017. However, a perusal of the said order shows that a few charges which were initially made out against the petitioner were dropped after the conduction of the enquiry proceedings. This shows that the proceedings had no apparent '*vindictiveness*', as contended by the learned counsel for the petitioner.

16. This Court is of the considered view that in all the three factors, as discussed above, the impugned order does not fall under any of the aforementioned exceptions, which would warrant any interference by this Court. However, it is not the case of the respondent bank that the petitioner had indulged in corruption or derived any monetary benefit during his tenure at the Gudivada Branch. This Court is also of the considered view that the petitioner had a long and noteworthy tenure at the respondent bank for about thirty four years. It is also pertinent to mention that the respondents have not brought to the notice of this Court that the petitioner had indulged in any other delinquencies prior to the present incident, and also keeping in view that the order of removal from service was received by the petitioner merely four days before the date of his

superannuation, this Court feels it appropriate to direct the petitioner to make a fresh representation before the respondent authorities for modification of the punishment from dismissal from service to that of compulsory retirement in terms of Regulation 4(h) of the Andhra Bank Officer Employees' (Dismissal & Appeal) Regulations, 1976. In view of the foregoing discussions, this Writ Petition is liable to be disposed of.

17. Accordingly, this writ petition is disposed of by directing the petitioner to make a fresh representation before the respondent authorities for modification of the punishment from dismissal from service to that of compulsory retirement in terms of Regulation 4(h) of the Andhra Bank Officer Employees' (Dismissal & Appeal) Regulations, 1976 within a period of four (04) weeks from the date of receipt of a copy of this order and on receipt of the same, the respondent bank authorities are directed to consider the same and pass appropriate orders in accordance with law, within a period of eight (08) weeks thereafter. No order as to costs.

As a sequel, miscellaneous applications pending, if any, in this Writ Petition, shall stand closed.

NAMAVARAPU RAJESHWAR RAO, J

Date: 25.01.2024
BDR