Supreme Court of India
State Bank Of Hydrabad vs Rangachary on 12 January, 1994
Equivalent citations: 1994 SCC, Supl. (2) 479 1994 SCALE (1)633
Author: B Jeevan Reddy
Bench: Jeevan Reddy, B.P. (J)

PETITIONER:
STATE BANK OF HYDRABAD

Vs.

RESPONDENT:
RANGACHARY

DATE OF JUDGMENT12/01/1994

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
HANSARIA B.L. (J)

CITATION:
1994 SCC Supl. (2) 479 1994 SCALE (1)633

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. Leave granted.

2. This appeal is preferred against the order of the Division Bench of the Andhra Pradesh High Court allowing the writ petition on the only ground that copy of the Enquiry Officer's report was not supplied to the respondent delinquent officer before imposing the punishment. A few facts need be stated.

3.The respondent was appointed as a clerk in the appellant-Bank (State Bank of Hyderabad). On 16-10-1976, he was promoted to the post of Officer Grade II. In the year 1981, he was working as Grade I Officer at Sangareddy Branch. With respect to his work at the said branch certain complaints were received and after obtaining his explanation, three charges were framed against him. An Enquiry Officer was appointed to inquire into those charges. After holding the inquiry, the

Enquiry Officer held that charges 1 and 2 are not proved but charge 3 is proved.

4.The matter was placed before the disciplinary authority as required by sub-regulation (3) of Regulation 68 of State Bank of Hyderabad (Officers) Service Regulations, 1979. The disciplinary authority agreed with the findings of the Enquiry Officer and since he was not competent to impose major penalty, which in his opinion was called for in the case, he placed the entire record along with his recommendations before the appointing authority as required by sub-regulation (3) of Regulation 68. The appointing authority, however, disagreed with the findings of the Enquiry Officer on charges 1 and 2 (which were concurred in by the disciplinary authority). The appointing authority found charges 1 and 2 also proved. Accordingly, he imposed the punishment of compulsory retirement.

5.The respondent approached the High Court by way of a writ petition against the said order of punishment. It was heard by a learned Single Judge in the first instance who referred the matter to a Division Bench on the question whether it is necessary to give an opportunity to the delinquent officer to show cause where the disciplinary authority/appointing authority disagrees with the findings recorded by the Enquiry Officer on some or all the charges. The Division Bench considered the said question at length and held that there is no such requirement in the rules nor such a requirement can be deduced from the principles of natural justice. Having so expressed itself, the Division Bench allowed the writ petition on the ground that the copy of the Enquiry Officer's report was not supplied to the respondent before imposing the punishment. This it did purporting to follow the decision of this Court in Union of India v. Mohd. Ramzan Khan1.

1 (1991) 1 SCC 588: 1991 SCC (L&S) 612:(1991) 16 ATC 505

6.The question whether the non-supply of Enquiry Officer's report vitiates the order of punishment and, if so, in what manner, has been fully considered by the Constitution Bench in Managing Director, ECIL, Hyderabad v. B. Karunakar2. It is pursuant to the said judgment that this matter is placed before us. Since the order of punishment in this case is earlier to the date of judgment in Ramzan Khan case', it must be held that the non-supply of Enquiry Officer's report does not vitiate the order of punishment.

7.Learned counsel for the respondent, however, raised another contention based upon the language of sub-regulation (3) of Regulation 68 aforesaid. Regulation 68 describes the procedure to be followed in the disciplinary inquiry. It is a very lengthy regulation and need not be reproduced in full. It is enough if we notice sub-clause (b) of clause (xxi) of sub-regulation (2) of Regulation 68 and sub- regulation (3) of Regulation 68. ' They read as follows:

> "Regulation 68(2)(xxi)(b) : The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include (1) the report of the inquiry prepared by it under (a) above;

(2) the written statement of defence, if any, submitted by the officer referred to in clause (xv);

(3)the oral and documentary evidence produced in the course of the inquiry; (4) written briefs referred to in clause (xviii) if any; and (5) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

3.(i) The disciplinary authority, if it is not itself the inquiring authority, may, for reasons to be recorded by it in writing, remit the case to the inquiring authority in the same or different for fresh or further inquiry and report, and the inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of sub- regulation (2) as far as may be.

(ii)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.

(iii)If the disciplinary authority, having regard to its findings on all or any of the article of charge, is of the opinion that any of the penalties specified in Regulation 67 should be imposed on the officer, it shall notwithstanding anything contained in sub-regulation (4), make an order imposing such penalty, Provided that where the disciplinary authority is of the opinion that the penalty to be imposed is any of the major penalties specified in clauses (e), (f), (g) and (h) of Regulation 67 and if it is lower in rank to the appointing authority in respect of the category of officers to which the officer belongs, it shall submit to the appointing authority the records of the inquiry specified in clauses (xxi)(b) of sub-regulation (2), together with its recommendations regarding the penalty that may be imposed and the 2 (1993) 4 SCC 727: 1993 SCC (L&S) II 84: (1993) 25 ATC 704: JT (1993) 6 SC 1 appointing authority shall make an order imposing such penalty as it considers in its opinion appropriate.

(iv)If the disciplinary authority or the appointing authority as the case may be, having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the officer concerned."

8.A reading of the above provisions shows that the Enquiry Officer has to submit the record and his findings along with his recommendation to the disciplinary authority. If the disciplinary authority agrees with the findings it can impose the punishment which it is competent to do. However, if, disciplinary authority disagrees with the findings of the enquiring authority on any article of charge it is under an obligation to record its reasons for disagreement and record its own findings on such charges. If, however, the disciplinary authority is of the opinion that any of the major penalties mentioned in clauses (e),

(f), (g) and (h) of Regulation 67 ought to be imposed, which he cannot impose, he has to make over the entire record along with his recommendations to the appointing authority. It is open to the appointing authority to impose such penalty as it considers appropriate in its opinion. Clause

(iv) of sub-regulation (3) shows that it is open to the appointing authority as well as the disciplinary authority to come to their own findings on all or any of the article of charges and if they are of the opinion that no penalty is called for notwithstanding the report of the Enquiry Officer, they can pass an order exonerating the delinquent officer. Now the contention of Mr B. Parthasarthy, learned counsel for the respondent is that the appointing authority cannot differ from the findings recorded by the Enquiry Officer which have been agreed to by the disciplinary authority. According to the learned counsel the only jurisdiction of the appointing authority is to impose penalty based upon the findings recorded by the Enquiry Officer and accepted by the disciplinary authority. We are afraid, we cannot agree with the said contention in the face of clear language of clauses (iii) and (iv) of sub-regulation (3). The last sentence in the proviso to clause

(iii) clearly says that "the appointing authority shall make an order imposing such penalty as it considers in its opinion appropriate". This shows that appointing authority is not bound by the recommendation made by the disciplinary authority regarding penalty and that he can come to his own conclusion on the question of penalty. Now how can he come to a different conclusion on the question of penalty, if he cannot differ from the recommendation of the disciplinary authority regarding penalty and, if necessary, with his findings. In any event, this matter is placed beyond doubt by the language of clause (iv) which says that the disciplinary authority or the appointing authority, as the case may be, is of the opinion, "having regard to its findings" on all or any of the articles of charge, that no penalty is called for, he may pass an order exonerating the officer. In other words, it is open to the appointing authority to disagree with the findings of the Enquiry Officer, which may have been affirmed by the disciplinary authority and yet find that the articles of charge are not proved. If he can do this, he can also do the converse i.e., where the findings are in favour of the delinquent officer, he can disagree with them and hold the officer guilty. This, in our opinion, is the true construction of sub-regulation (3) read as a whole. The appointing authority cannot be constricted by the opinions of either the Enquiry Officer or the disciplinary authority, nor can he be reduced to a mere instrument for imposing higher punishment. We see no reason to shackle his discretion and authority inhering in him as the appointing authority.

9.We are, therefore, of the opinion that there is no substance in the submission of Mr Parthasarthy, learned counsel for the respondent which appears to be based exclusively upon the opening words in clause (ii) of sub- regulation (3). In fact, one must read the entire sub- regulation to properly appreciate its import.

10.For the above reasons, the appeal is allowed. The judgment of the Division Bench of the High Court is set aside and the order of punishment is restored. No costs.

11.While granting notice in the special leave petition this Court made the following order on 7-5-1991:

> "Issue notice returnable within ten weeks. There will be interim stay of the operation of the judgment of the High Court on condition that the appellant-Bank will treat the respondent as if under suspension and grant him subsistence allowance from the date of the High Court judgment as admissible under the rules to one who is under

suspension, subject to the final result of the petition."

12.Now that we have allowed the appeal, the stay order shall cease to operate. However, the respondent is entitled to terminal benefits or other benefits, if any, according to his conditions of service. The same shall be paid to him in accordance with law.