Supreme Court of India
State Bank Of India vs S.S.Koshal on 12 January, 1994
Equivalent citations: 1994 SCC, Supl. (2) 468
Author: B Jeevan Reddy
Bench: Jeevan Reddy, B.P. (J)

PETITIONER:
STATE BANK OF INDIA

Vs.

RESPONDENT:
S.S.KOSHAL

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) 468

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. Leave granted.

2. This appeal is preferred against the judgment of the Madhya Pradesh High Court allowing the writ petition filed by the respondent. The respondent was the Branch Manager in the State Bank of India, Bhopal branch. A disciplinary inquiry was held against him in respect of six charges. The Enquiry Officer held charges 1 and 5 established but held that charges 2, 3, 4 and 6 were not established. After perusing the report of the Enquiry Officer the disciplinary authority agreed with the Enquiry Officer that charges 1 and 5 are established and charges 3 and 4 are not established. So far as charge 2 is concerned he disagreed with the Enquiry Officer. The disciplinary authority held that the said charge to have been fully established. So far as charge 6 is concerned, he again disagreed with the Enquiry Officer and held it partially established. Accordingly, he imposed the punishment of removal from service by an order dated 8-5-1984. The respondent filed an appeal to

the appellate authority prescribed by the service regulations. The appellate authority dismissed the appeal on 25-1-1985 under the following order:

> "With reference to your appeal dated 31-8- 1984, we have to advise that the said appeal was placed by us before the Local Board, the appellate authority, on 25-1-1985. We further advise that the Board in the meeting held on the aforesaid date, resolved as under: "THE BOARD considered at length the facts of the case including the fact that the disciplinary authority has differed from the findings of the inquiring authority in respect of two charges. After having considered the appeal and other relevant papers and having applied their minds, the Board concluded that there are no grounds to sustain the appeal and accordingly RESOLVED that the order of the disciplinary authority be upheld and that the appeal made by Shri S.S. Koshal, be dismissed."
>
> + Arising out of SLP (C) No. 8147 of 1992
>
> 3. The respondent then approached the High Court by way of a writ petition, wherein he urged three grounds viz., (1) [N]on-supply of copy of the Enquiry Officer's report, (2) the failure to give a fresh notice to him when the appellate authority disagreed with the findings of the Enquiry Officer on some of the charges, and (3) the fact that the appellate authority passed a non-speaking order in violation of the principles of natural justice.

4. The High Court upheld all the three grounds and allowed the writ petition against which the present appeal is preferred.

5. The first contention stands negatived by the Constitution Bench decision in Managing Director, ECIL, Hyderabad v. B. Karunakar1, inasmuch as the order of punishment is prior to 20-11-1990.

6. So far as the second ground is concerned, we are unable to see any substance in it. No such fresh opportunity is contemplated by the regulations nor can such a requirement be deduced from the principles of natural justice. It may be remembered that the Enquiry Officer's report is not binding upon the disciplinary authority and that it is open to the disciplinary authority to come to its own conclusion on the charges. It is not in the nature of an appeal from the Enquiry Officer to the disciplinary authority. It is one and the same proceeding. It is open to a disciplinary authority to hold the inquiry himself. It is equally open to him to appoint an Enquiry Officer to conduct the inquiry and place the entire record before him with or without his findings. But in either case, the final decision is to be taken by him on the basis of the material adduced. This also appears to be the view taken by one of us (B.P. Jeevan Reddy, J.) as a Judge of the Andhra Pradesh High Court in Mahendra Kumar v. Union of India'. The second contention accordingly stands rejected.

7. Now coming to the third ground on which the High Court has allowed the writ petition, the relevant rule [Rule 51(2)] reads as follows:

> "An appeal shall be preferred within 45 days from 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 employee may, if he so desires, submit an advance copy to the appellate authority. The authority whose order is appealed against shall forward the appeal together with its comments and records of the case to the appellate authority. The appellate authority shall consider whether the findings are justified and/or whether the penalty is excessive or inadequate. 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 directions as it deems fit in the circumstances of the case."

8. The High Court has taken the view that the rule requires the appellate authority to pass a speaking order even if it is an order of affirmance. For the purpose of this case, we shall assume the said view to be the correct one. Even so we are not satisfied that the appellate order is not a speaking order. We have already extracted the appellate order in full hereinbefore, which shows that it 1 (1993) 4 SCC 727: 1993 SCC (L&S) 1184: (1993) 25 ATC 704: JT (1993) 6 SC 1 2 (1983) 3 SLR 319, 324 & 325 (AP HC) considered at length the facts of the case including the fact that the appellate authority (sic disciplinary authority) had differed from the findings of the Enquiry Officer in respect of the two charges. The appellate authority then says that it considered the relevant grounds of appeal and after considering the facts of the case came to the conclusion that there was no substance in the appeal. In view of the fact that it was an order of affirmance, we are of the opinion that it was not obligatory on the part of the appellate authority to say more than this as the order as it is, shows application of mind. The order cannot be characterised as a non-speaking order.

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