

**BEFORE THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
PUDUCHERRY.**

R.P. No.1/2013

Present : **Thiru T. KARIKALAN,**
Registrar of Co-operative Societies
Puducherry.

J. Radhakrishnan
S/o. Jangal Naidu
No.7, Kamarajar Sreet
Kosapalayam
Puducherry- 605 013.

.. Petitioner

Vs.

1. The Pondicherry Co-operative Sugar Mills Limited
Rep. by its Managing Director (Disciplinary authority)
Lingareddipalayam
Puducherry.

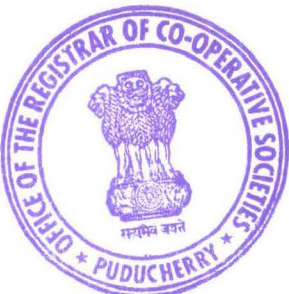
2. The Administrative Officer
The Pondicherry Co-operative Sugar Mills Limited
Lingareddipalayam
Puducherry.

.. Respondents

ORDER

(Issued under Section 141 of the Puducherry Co-operative Societies Act)

Calling in question the legal pregnablility of the order dated 27th February 2013 of the first respondent discharging the petitioner from service this revision petition is filed under Section 141 of the Puducherry Co-operative Societies Act, 1972 (for easy reference the 'Act').



THE CAUSE

2. The gravamen of grievance of the petitioner, as stood expositied from the affidavit would run thus:

2.1 The petitioner was working as Assistant Storekeeper/Senior Clerk in the Pondicherry Co-operative Sugar Mills Limited No. P. 315 (for short the Mills). A charge memorandum was issued to him indicting him for a theft that took place in the Mills. As the petitioner denied the charges, an enquiry was ordered into the charges and the enquiry officer submitted the report on 2nd November 2004 holding that all the charges against the petitioner were not proved. As the disciplinary proceedings were not finalized, he filed a writ petition in W.P. No.16124/2003. A direction was given, vide order dated 20th August 2003 to dispose the proceedings within a period of six months. But the order of the Hon'ble High Court was not complied with by the respondents.

2.2 Accepting the report of the enquiry officer, a second show cause notice was issued on 24th January 2007, forwarding the enquiry report. The petitioner sought to drop further proceedings as he was held not guilty by the enquiry officer. No final order was passed.

2.3 By notice dated 12th February 2013 the first respondent gave a notice stating that he was disagreeing with the findings of the enquiry officer and proposed a punishment of dismissal from service. By order dated 27th February 2013 an order was passed by the first respondent imposing a punishment of discharge from service and this order is impugned in this revision petition.

2.4 The thrust of the averment is that the impugned order was without jurisdiction as the disciplinary authority has agreed with the findings of the enquiry officer and forwarded the report to him. Issue of third show cause notice in this matter is without legal base. Without hearing the petitioner an extreme punishment of dismissal from service was proposed against all cannons of natural justice. The enquiry proceedings were badly delayed and because of huge lapse of time, the petitioner has lost his proper know of details of the subject. On the above premises, the petitioner sought to quash the impugned order.



THE DENIAL

3. Controverting the allegations the respondents would pyramid their arguments which could be succinctly and precisely be set out thus:

3.1 The petitioner was directed to compensate the pecuniary loss of the mill to the tune of Rs. 1,65,233.35 as his share of the total deficit, but instead of giving his explanation, the petitioner sent a legal notice stating that the notice issued by the first respondent was not legal and he would take contempt proceedings against him. The first respondent issued a memorandum dated 12th February 2013 to the petitioner intimating that he differed from the findings of the enquiry officer and held him guilty, proposing to award the punishment of dismissal as per the standing orders. He was given an opportunity to represent against the proposed punishment. The petitioner did not respond to the said memorandum and hence the impugned order was passed by the first respondent, discharging the petitioner from service.

3.2 It was stated further that the first respondent being the disciplinary authority has got quasi-judicial powers either to accept the findings of the enquiry officer or to differ from the same and to impose the punishment on his own, based on the merits of the case and giving reasons for the same. The decision of the disciplinary authority is final, in so far as the disciplinary proceeding is concerned, in spite of the fact that the enquiry officer has exonerated him of the charges.

THE REJOINDER

4. In his rejoinder, the petitioner would submit that the respondents have not cared to give effect to the directions of the Deputy Registrar (Legal) given in NMD No. 1/2011 dated 8th July 2011, wherein it was ordered to make all the payments due to the petitioner within eight weeks. The petitioner has filed a writ petition in W.P. No.659/2013 to implement the directions given in his favour. When the writ petition was pending, taking action to recover the amount from the petitioner will be out of question. The respondents were re-enacting the whole episode after their failure to prove the charges foisted against the petitioner in the enquiry before



the enquiry officer. The petitioner sought to reject the reply filed by the respondents and allow the revision petition.

THE DELIBERATION

5. The revision petition was dealt by my learned predecessor. She could not dispose the revision petition as she was the enquiry officer on the charges against the petitioner and she exonerated him of the charges. In view of this, Thiru K.K. Singh, Director of Industries (as he was then) was appointed as special Registrar to deal and dispose the revision petition. When I assumed office as the Registrar, the Government by order dated 12th June 2014, directed me to take up the revision petition for disposal.

6. The petition came up for hearing before me on 4th July 2014. The revision petitioner and the respondents, represented by Thiru R. Thiagarajan, Administrative Manager i/c., were present.

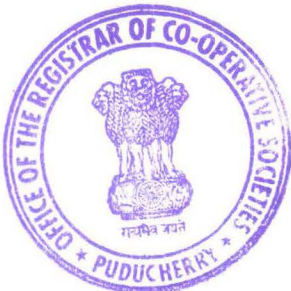
7. The petitioner submitted that he has not given any reply to the Memorandum dated 12th February 2013 on the proposed penalty communicated to him. He added that when the communication regarding stock verification in the Mills took place during May 2003 reached him, he was under suspension and the stock verification was already over.

8. To the host of queries on the episode, the respondent sought time to furnish his reply in writing. He was directed to submit his reply on or before 11th July 2014, under a copy to the petitioner. But no reply was furnished by the respondent within the dateline.

THE POINTS TO PONDER

9. On poring over the submissions of the parties and on perusal of records, the issues that confront me in the revision petition are:

(i) When the then Managing Director of the Mill, by notice dated 24th January 2007, forwarded the enquiry report to the petitioner calling for his explanation, is it open to the first respondent to re-open the case and send a notice dated 12th February 2013, differing from the findings of the enquiry officer and proposing a punishment of dismissal of service?;



(ii) When the disciplinary authority differed with the findings of the enquiry officer, is it necessary to give the petitioner an opportunity of hearing, before the disciplinary authority recorded its finding of holding the petitioner guilty of charges?

(iii) What is the effect on the delay in concluding the disciplinary proceedings against the petitioner?

ON THE FIRST ISSUE

10. The petitioner raised a specific issue on the authority of the first respondent in issuing a notice dated 12th February 2013, when the then Managing Director has accepted the enquiry report and forwarded it to him. Even during the arguments, the petitioner stressed this point. Nothing was given by way of reply to this point by the respondents in their counter. There is no gainsaying that the disciplinary authority is not bound to accept the findings of the enquiry officer in all cases and it is always open to the authority to differ from the findings. But the pertinent question is, can this be done after forwarding the report to the charged official, calling for his explanation. It is the contention of the petitioner that the question of forwarding the enquiry report to the delinquent will arise only when the disciplinary authority is satisfied or concurred with the conclusion reached by the enquiry officer. If the authority has any reservation it could have communicated the reasons for differing with the enquiry officer at that point itself.

11. In this case, the enquiry report was forwarded to the petitioner, calling for his explanation by memorandum dated 27th January 2007. The petitioner submitted his explanation 29th January 2007. Why no decision was taken on this reply could not be explained by the respondent. After six years, the petitioner received a communication from the first respondent stating that he was not concurring with the findings of the enquiry officer and for the reasons recorded he found the petitioner guilty of all charged. He proposed the punishment of dismissal from service. The delay in disposing the case after receipt of the representation from the petitioner was not explained. Further the first respondent did not justify his propriety to differ with the findings of the enquiry officer after forwarding the report. I find considerable force in his contention that when the disciplinary



authority forwarded the report to the petitioner it goes to show that the authority has no objections to the findings of the enquiry officer. Without deciding the case and re-opening it after a period of six years and holding that all the charges were proved cannot be countenanced. No plausible explanation was forthcoming from the respondent in this regard. In view of the matter, I hold that the objection raised by the petitioner is sustainable.

ON THE SECOND ISSUE

12. The next limb of assault of the impugned order is that the first respondent has arrived at a conclusion that the findings of the enquiry officer were unacceptable to him without hearing the petitioner and he proposed the extreme punishment of dismissal from service. The grounds stated in the impugned notice are all not part of the enquiry records and without any evidence, the petitioner was not in a position to reply the allegations made in the show cause notice. On these grounds the petitioner averred that the show cause notice was an arbitrary exercise of power.

13. This takes me to next issue, whether the petitioner was entitled to be heard before the first respondent comes to a conclusion that findings of the enquiry officer, holding the petitioner unblemished, are not convincing to him and hence he differed from the findings and hold him guilty of the charges. The issue is no more res integra. The Hon'ble Supreme Court of India, in *Punjab National Bank and others vs. Kunj Behari Misra*, (1998) 7 SCC 84 : 1998 (2) CTC 742 : AIR 1988 SC 2713 : 1998 (II) LLJ 809 settles the issue beyond debate. The Court observed thus:

"When, like in the present case, the inquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the findings of the disciplinary authority.

When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should



not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed.

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 favorable 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 a representation before the disciplinary authority records its findings on the charges framed against the officer.
[Underlined by me for emphasis]

14. In *Chennai Metropolitan Water Supply and Sewerage Board, rep. by its Board of Directors and others vs. P. Palanivelan*, 2005 (3) CTC 656, the facts of the case are that the respondent was an employee of the appellant Board and he was charge-sheeted on several charges. In the departmental enquiry, the enquiry officer found him innocent. The disciplinary authority disagreed with the finding of the enquiry officer and without giving an opportunity of hearing to the respondent/petitioner imposed the punishment of stoppage of increment. The learned single Judge of High Court of Madras held that opportunity of hearing should have been given to the employee concerned. When the matter was taken on appeal before the Division Bench, the Court held that no doubt even if the enquiry officer finds an



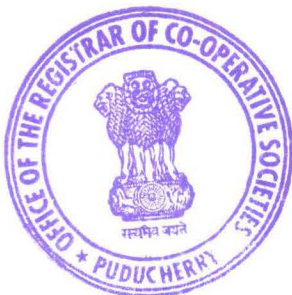
employee to be innocent, it is open to the disciplinary authority to disagree with such finding but in that case, the disciplinary authority must give an opportunity of hearing to the delinquent and record his reasons for disagreeing with the findings of the enquiry officer. Reliance was placed on the judgment of the Hon'ble Supreme Court in *Punjab National Bank and others vs. Kunj Behari Misra* [supra].

15. The view taken by the Hon'ble Apex Court in the aforesaid case has consistently been approved and followed as is evident from the judgments in *Yoginath D. Bagde vs. State of Maharashtra & another*, AIR 1999 SC 3734; *State Bank of India & others vs. K.P. Narayanan Kutty*, AIR 2003 SC 1100 : 2003 (1) Supreme 778; *J.A. Naiksatam vs. Prothonotary and Senior Master, High Court of Bombay & others*, AIR 2005 SC 1218; *P.D. Agrawal vs. State Bank of India & others*, AIR 2006 SC 2064; and *Ranjit Singh vs. Union of India & others*, AIR 2006 SC 3685.

16. In *Canara Bank & others vs. Shri Debasis Das & others*, AIR 2003 SC 2041, the Hon'ble Supreme Court explained the ratio of the judgment in *Kunj Behari Misra* (supra), observing that it was a case where the disciplinary authority differed from the view of the inquiry officer. In that context, it was held that denial of opportunity of hearing was *per se* violative of the principles of natural justice.

17. Reiterating the principles laid down in *Kunj Behari Misra* (supra), the Hon'ble Supreme Court in a recent judgment, *S.P. Malhotra vs. Punjab National Bank and others*, (2013) INSC 652 : 2013 (3) KLT SN 40, held that not furnishing the copy of the recorded reasons for disagreement from the enquiry report itself causes the prejudice to the delinquent.

18. In the light of the settled law on the subject I hold in unequivocal terms that non-furnishing of tentative reasons to the petitioner, who was set free by the enquiry officer, before differing from the findings of the enquiry officer is a violation of principles of natural justice which in turn exposes the vulnerability in the impugned order. The impugned order does not stand to legal scrutiny, as the petitioner was held guilty without being heard.



ON THE THIRD ISSUE

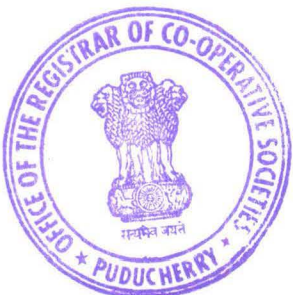
19. Yet another disquieting factor is the unreasonable and unexplained delay at every stage of disciplinary proceedings against the petitioner. It is more disturbing that the respondent has not adhered the time limit given by the Hon'ble High Court of Madras and by the Deputy Registrar of Co-operative Societies (Legal) when the protracted disciplinary proceedings were impugned before them. Let me dwell the sequence of events to drive home this point.

20. The alleged theft took place in the Mills on 11th May 2003 and it was reported by the Factory Manager on 17th May 2003. The petitioner was placed under suspension on 19th May 2003. A special audit team conducted stock verification and disciplinary proceeding was initiated by appointing an enquiry officer on 30th June 2003. Charge sheet was issued to the petitioner on 14th January 2004. The enquiry officer submitted the report on 2nd November 2004. The enquiry officer held that all the four charges levelled against the petitioner were not proved.

21. In the meantime, the petitioner approached the Hon'ble High Court seeking to quash the proceedings against him, the High Court by order dated 20th August 2003 in W.P. No.16124 of 2003, directed the disciplinary authority to appoint an enquiry officer, hold an enquiry and pass appropriate order on merit in the disciplinary action expeditiously, in any event within six months from the date of receipt of the order. Nothing happened as mandated by the High Court.

22. A copy of the enquiry report was forwarded to the petitioner vide memorandum dated 24th January 2007, calling for his explanation. The petitioner promptly submitted his explanation on 29th January 2007, seeking to withdraw the order of suspension and grant him all the monetary benefits.

23. The tale of woes continued. The petitioner filed a dispute under Section 84 of the Puducherry Co-operative Societies Act, 1972, in NMD No. 1/2011, alleging that he was not paid any monetary benefits like annual increments, bonus, incentives, leave benefits, encashment of leave with effect from 19th May 2003. The benefit of pay revision was also not extended to him. His juniors were elevated. Seeking intervention to direct



the respondent to restore all the benefits to him with interest, the dispute was filed.

24. The Deputy Registrar (Legal), by order dated 8th July 2011, allowed the dispute and directed the respondent to pay the benefits to the petitioner within a period of eight weeks from the date of order. This order was implemented in breach.

25. A couple of notices were issued to the petitioner directing him to make good of the loss, as disclosed by the stock verification report. The petitioner maintained that he was not obliged to pay the amount as he was set free by the enquiry officer. Undaunted by the explanation the respondent insisted that the deficit of stock should be restored by the petitioner and others. By Memorandum dated 12th February 2013, the first respondent narrated how he differed from the findings of the enquiry officer and held that all the charges levelled against the petitioner were proved. Before awarding the punishment of dismissal from service, he directed the petitioner to make his representation on the proposed penalty. Finding no representation from the petitioner, he imposed the punishment of discharge, vide order dated 27th February 2013. It is apposite and appropriate to quote the operative portion of the impugned order.

"11. In view of the above, the disciplinary authority is now constrained to decide the case with the available material. The theft took place on 11-05-2003 and the inquiry officer submitted her report on 02-11-2004. It is always open to the disciplinary authority to decide the case on merit. It is unfortunate that there was much delay in taking a final decision by the disciplinary authority and in the meantime, the charged officer was denied of his annual increments and pay fixation on account of the wage settlement. This apathy continued, even after the orders from the Hon'ble Madras High Court, to decide the case on merit within six months in Writ Petition No.16124/2003 and W.P.M.P. No. 20196/2003, dt. 20-08-2003.

12. Considering the facts that the charged officer has already undergone unintended punishment under the Standing orders as stated in para 11 above, the disciplinary authority hereby awards



the punishment of discharge under clause 44 (viii) of the Standing orders of the Mills with immediate effect, for the misconduct committed by him under clause 43 (xviii) of the Standing Orders of the Mills."

26. The respondent was candid in admitting that the delay in concluding the disciplinary proceedings against the petitioner was unfortunate and resulted in financial loss to him. This may be a mitigating factor that caused sympathy on the petitioner, the proposed punishment of dismissal from service has resulted in discharge from service. But the respondent, though he may not be the one to be blamed personally for the delay, must be aware that this is a classic example of miscarriage of justice. His admission on delay and sympathetic words cannot compensate the agony of the petitioner and what he lost in all these years. He was languishing even without annual increment, bonus, benefit of pay revision and to cap it all, watching his juniors getting promoted.

27. How holdup in the disciplinary proceedings are viewed by the Courts and how such delay becomes fatal and causes untold misery on the delinquents may be demonstrated by few judgments of the Hon'ble Apex Court.

28. Frowning over the delay in disciplinary proceedings against the delinquents and their sufferings, the observations made in *P.V. Mahadevan vs. The Managing Director, Tamil Nadu Housing Board*, (2005) 6 SCC 135 : 2005 (5) SCALE 655 : 2005 (4) CTC 403 : 2005 (6) JT 465 are quite appropriate.

"The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the



mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer." [Emphasis supplied]

29. The above observations fit in like a glove to the facts of the present case and apply in all four. To creep up to the above conclusion, the Hon'ble Supreme Court relied on a couple of its earlier decisions, which are worth quoting. In *State of Madhya Pradesh vs. Bani Singh and another*, reported in [1990] Supp. SCC 738 : 1990 (II) LLJ 529, it was held that

"The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt on the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

30. In *State of A.P. v. N. Radhakrishnan* reported in [1998] 4 SCC 154, the Court observed that the delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings.....Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings.



31. It is unnecessary and platitudinous for me to burden this order with more such illuminating decisions on this point.

THE CONSEQUENCE

32. I was informed that the petitioner has attained the age of superannuation already. It will, therefore, not be in the interest of justice that at this stage the case be remanded to the disciplinary authority for the start of another innings. The impugned order deserves to be dismissed in view of the fact that all the three issues are to be answered in favour of the petitioner and against the respondents. In view of the premised reasons I conclude and hold that the impugned order suffers from the legal infirmity and the undue delay deserves to be condemned in no uncertain terms. The revision petition stands allowed and the impugned order is set aside. The petitioner shall be taken to have retired on the date when he would have superannuated. The respondents are directed to release all the monetary and terminal benefits due to the petitioner expeditiously, in any case within one month from the date of receipt of this order. There is, however, no order as to costs.

Pronounced in the open forum on this 24th day of July 2014.



T. Karikalan

[T. KARIKALAN]

REGISTAR OF CO-OPERATIVE SOCIETIES

To

The parties.