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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A. 223/99

Date: 27.6.2000

Between:

G. Kameswara Rao, IAS

.. Applicant

A N D

1. The Union of India
Secretary,
Department of Personnel &
Training, North Block
New Delhi.

2. The Chief Secretary to Govt. of
A.P.,
Secretariat,
Hyderabad.

3. The Secretary to Govt. of
A.P.,
General Administration(SC-D)Dept.
Secretariat,
Hyderabad. .. Respondents

Counsel for the applicant :Mr. K.Sudhakar Reddy

Counsel for the respondents: Mr. B.N. Sharma for R-1
Mr. Anil Kumar for R-2&3

Coram:

Hon. Shri R.Rangarajan, Member (A)

Hon. Shri B.S.Jai Parameshwar, Member (J)

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O R D E R
(Per Hon. Shri B.S. Jai Parameshwar, Member (J))

Heard Mr. K. Sudhakar Reddy, learned
counsel for the applicant and Mr. B.N. Sharma, learned
standing counsel for the respondent No.1, and
Mr. Anil Kumar, learned standing counsel for
respondents No. 2 & 3.

2. The applicant herein is an IAS Officer
of 1983 batch of Manipur-Tripura cadre. He was on
inter-cadre deputation to Andhra Pradesh. Between
12-5-1993 to 17-9-1996 the applicant on deputation
was working as the Managing Director, ^{M/s. The} Andhra Pradesh
Women's Co-operative Finance Corporation Ltd. Hyderabad
(in short "The Corporation").

3. While working as such the applicant
appears to have committed certain irregularities
relating to the funds of the Corporation. Hence was
issued with a memorandum bearing No. 124/SC-D/A3/97-2
dt. 16-7-97 to offer his explanation. The applicant
submitted his explanation on 3-9-97. The respondents
2 and 3 were not satisfied with the explanation offered
by the applicant hence they issued a chargesheet dt.
6-10-1998 (Annexure A-1, page 43) under Rule-8 of
All India Services (Discipline & Appeal) Rules, 1969.
The misconduct alleged against the applicant is as
follows :

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"ARTICLE-I"

Sri G. Kameswara Rao, I.A.S. (MT:83) who was on inter-cadre deputation to Andhra Pradesh, while working as the Managing Director, Andhra Pradesh Women co-operative Finance Corporation Limited, Hyderabad during the period from 12-5-1993 to 3-10-1996 has deposited an amount of Rs.180.00 lakhs in Aryan Cooperative Bank, Hyderabad in violation of Bye-Laws of the A.P. Women Cooperative Finance Corporation Limited, Hyd.

ARTICLE-II

Sri G. Kameswara Rao, I.A. (MT:83) who was on inter-cadre deputation to Andhra Pradesh, while working as the Managing Director, Andhra Pradesh Women Cooperative Finance Corporation Limited, Hyderabad during the period from 12-5-1993 to 3-10-1996 had in deviation of the suggestion of his subordinates, passed orders for renewal of F.D.Rs. to the tune of Rs.180.00 lakhs in Aryan Cooperative Urban Bank for a period of three months beyond the date of maturity instead of taking steps to withdraw the amounts as the Bank failed to pay the amount of interest accrued on the FDRs on the due dates, resulting in huge financial loss to the Corporation

2. Thus Sri G. Kameswara Rao, I.A.S. (MT:83) formerly Managing Director, Andhra Pradesh Women Cooperative Finance Corporation Limited, Hyderabad by his above mentioned acts committed grave mis-conduct and exhibited lack of integrity devotion to duty and conduct un-becoming of a Member of Indian Administrative Service and, thereby, contravened Rule 3(1) of the All India Services (Conduct) Rules, 1968. "

4. Applicant has filed this application to call for the records relating to the impugned chargesheet

21 issued vide GO Rt. No. 4206 dt. 6-10-98 issued by the

second respondent and to quash the same as illegal, arbitrary and unconstitutional.

5. The contentions of the applicant

to the chargememo are as under :

(a) the impugned chargesheet was issued after an inordinate delay of 14 months from the date of submitting his explanation to the memorandum dt. 16-7-1997;

(b) He had followed the instructions contained in GO No. 153, Finance and Planning (Plg.XI) Department dt. 18-12-1975;

(c) In fact many of the Govt. organisations like Co-operative Societies had deposited sums with M/s. The Aryan Urban Ltd. Cooperative Bank Hyderabad. (hereinafter referred to as "the Bank").

(d) When the subordinates submitted a note to withdraw the sums deposited with the said bank he ~~fatte~~ felt satisfied with the explanation offered by the Bank as regards to the delayed payment of interest on the fixed deposits and therefore he ordered for continuance ^{of} the fixed deposit with the Bank. He has narrated various circumstances under which certain

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other organisations and co-operative Societies had deposited sums with the Bank. He submits that by depositing the funds of the Corporation with the said Bank the Corporation had benefitted much. Even he had taken a decision to continue the deposit with the Bank in the best interest of the Corporation.

(e) After taking into consideration the subsequent events that led to filing a suit against the Bank it may at best be regarded as an error of judgment and therefore it may not be construed as misconduct.

(f) The applicant has taken various contentions in support of his prayer to quash the charge memo dt. 6-10-1998.

6. By interim order dt. 16-2-1999 this Tribunal suspended further proceedings pursuant to the impugned charge memo dt. 6-10-1998.

6(a) The respondent No. 1 has not filed any reply.
7. The respondents have filed their reply.

They submit that the GO dt. 18-12-1975 was not applicable to the Corporation. The said GO was issued by the Finance and Planning department and the same had not mentioned the Bank in particular. Further they submit if that the applicant was so particular to implement

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the GO referred to above, before implementation with the Bank he should have placed the item of depositing before the Board by displaying all the relevant Govt. orders before the Directors and should have obtained a resolution as required under Bye-law 44 of the Corporation. Thus, they submit that, the applicant took a unilateral single handed decision keeping the Board of Directors of the Corporation in dark. Thus they submit that the decision of the applicant to deposit a sum of Rs.180 lakh with the Bank had caused loss to the Corporation and also the said decision was in contravention of the bye-law No.44 of the Corporation. Further, they submit, that the Corporation was constrained to file a suit against the Bank in OA No. 2286/97 and that still the funds of the Corporation deposited with the Bank are lying with the Bank and the Bank had approached the Hon. High Court and had taken an interim order permitting it to pay only 1/3rd of the amount within a stipulated time of one month. Thus they submit that there is loss to the Corporation. Further the action of the applicant was not in accordance with the bye-laws. They submit that by virtue of the interim order dt. 16-2-99 no further steps have been taken pursuant to the impugned charge memo. They have produced the bye-laws of the Corporation.

8. The applicant has filed rejoinder. The

In the rejoinder, the applicant has stated that there is a delay of 14 months in issuing charge memo dt. 6-10-1998

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is relevant for the Government. It made statement
 before the Assembly on 25-3-98 to a starred question
 No. 7041 that disciplinary action had been initiated
 against the applicant for having deposited Rs.180 lakhs
 with
the the Bank whereas the articles of charge were framed
 on 6-10-98; that the present action of the respondent
 is only to avoid the contempt of legislative Assembly
 having
furnished incorrect information even without
 issuing the charge memo as on 25-3-98; that the
 GO MS No.153 dt. 18-12-75 is clearly applicable to
 the Corporation and the said GO clearly states that
 the existing Corporation as well as other existing
 future institutions having a great deal of contract
 with agricultural or rural areas should deposit atleast
 33 1/3% of the existing funds with the cooperative banks,
 that the objectives of the Corporation clearly
 cover the said para of the GO. Therefore the GO
 is applicable to the Corporation as well, that the
 Corporation and financial institutions in the state
 had adopted and enforced
 the instructions contained in the GO
 dt.18-12-75
 for the last 20 years and now it is not reasonable
 on the part of the respondents to contend that the
 Corporation was excluded from the said GO. As regards
 ascertaining the soundness or otherwise of the Bank
 it is stated that the Bank is licenced by the Reserve
 Bank of India, registered as Cooperative Society
 by the Registrar of Cooperative Societies, audited by
 the District Cooperative Officer and the Bank had
 received deposits from many other Govt. departments

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and corporations. The registration was not cancelled by the Registrar of Cooperative Societies nor the licence was cancelled by the Reserve Bank of India. The audit certificate issued by the District Cooperative Audit Officer, Hyderabad clearly show the soundness of the Bank. The applicant has in para-5 of the rejoinder has given details of the financial activities of the Bank for the years 93-94 to 96-97. It is further stated that in all these years the Bank had earned a profit to the tune of Rs.37.81 lakhs, 44 lakhs, 39.47 lakhs and 24.57 lakhs during those years. Further he relied upon the letter dt. 15-9-86 from the Registrar of Cooperative Societies wherein instructions were issued to keep funds ~~in~~ ^{with} the Cooperative banks including Cooperative Urban Banks located in twin cities. The bank was periodically inspected by both the Reserve Bank of India and the Registrar of Cooperative Societies. Only in December, 1995 the financial crisis of the bank was noticed. Therefore there was no reason for the applicant to disbelieve the soundness before investing Rs.180 lakhs with the Bank.

9. The sum of Rs.180 lakhs was deposited with the Bank under FDR No. 3311 and 3312 dt. 17-10-95, that the interest thereon was paid on 17-10-95 and the same was received by the Junior Accounts Officer of the Corporation and hence on 18-10-1995 the applicant ordered to continue the deposits with the Bank.

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Thus the FDRs were renewed in July, 1995 upto 11-1-96 and other FDRs for Rs.80 lakh were renewed in March, 1995 upto March, 1996. On the date of renewal of these FDRs with the Bank, there was absolutely no suspicion/ whatsoever about the soundness of the Bank. Further he submitted that a sum of Rs.100 lacs was prematurely withdrawn on 19-10-95 a day before the soundness of the bank was suspected. Thus the applicant denies that he had renewed the FDRs for three more months. He submits that the Corporation has not incurred ~~loss~~ any loss on account of his decision to invest with the Bank. In fact he submits that the Corporation has earned an amount of Rs.4,49,970-45ps towards interest. He further submits that the entire principal amount for Rs.180 lacs and interest of Rs.4,49,970.45 has already been paid by the Bank to the Corporation. He submits that all his predecessors in his office did not take approval of the Board to deposit funds with Banks or cooperative banks from inception under bye-law No.44. He submits that Govt. orders have precedence over the bye-laws of the Corporation. In support of this he submits that Govt. orders are issued by and in the name of ^{the} Governor of AP whereas bye-laws of a Cooperative society do not have the force of statute because they are framed under the Act. Thus he submits that bye-laws have no precedence over the instructions issued by the Govt. Thus he contends that even though he might not have taken prior approval of the Board for depositing Rs.180 lacs with the Bank that does not

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with
attach him any kind of misconduct. The said bye-law
No.44 of the Corporation provides for keeping
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funds in the nationalised bank only whereas similar
provision was contained in other Corporation also.
Those officers of the Corporation have not followed
the said bye-law and further they strictly adhered
to the orders given by GO Ms 153 dt. 18-12-75. Further
he submits that the respondents have admitted that
even other finance corporations had deposited ~~FDRs~~
with the Bank. When that was so, why the respondents
have not taken action against those officials keeping
for
the deposits with the Bank. He submits that even
though many of the officers were responsible for
depositing the sum with the Bank they were left out
and he has been singled out and it is a clear case
of discrimination.

10. He further disputed the averments made by the respondents stating that the other Corporation had deposited only Rs.20 crores. But 180 lacs is less than 20 Crores. When that is so the respondents should have proceeded against those who were responsible for depositing Rs.20 crores with the Bank before proceeding against him. He submits that even though the Govt. had taken a decision to proceed against those officials who were responsible for depositing with the bank as early as

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24-1-97 they have not taken any action against any official except himself. The bank has failed to refund the deposits to the tune of Rs.1300 lakhs to more than 20 departments/corporations as on December, 1995. He submits that the Managing Directors of all the Corporations deposited with the Bank ignoring the provision similar to bye-law 44 in their Corporation. He has cited instances wherein certain other financial institutions had deposited with the Bank. Further he submits that the authority who has signed the charge memo had himself deposited certain sums with the Bank while working as the Commissioner in the Endowment Department. He submits that the authority who had signed the charge memo had deposited Rs.15, 87, 114.75 with the Bank on 22-11-1995 much after the premature withdrawal of the deposits made by the Corporation from the Bank.

11. After hearing the learned counsels the only point that arises for our consideration is whether the charge memo dt. 6-10-98 is liable to be quashed or not ?

12. The respondents have produced the Bye-Laws of the Corporation. Bye-law No. 20, 21, 25(j) 26 and 27 are relevant. We have perused those bye-law's. In page 16 of the Bye-law the powers of the Managing Director are indicated. The Board is competent to make

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subsidiary rules for the proper functioning of the Corporation. The Bye-law's are meant to carry out the objectives of the Corporation. The objectives of the Corporation are indicated in bye-law No.3. The applicant was the Managing Director of the Corporation between 12-5-93 to 17-5-96. Apart from a sum of Rs.180 lacs invested with the Bank the corporation had earlier financial dealings with the bank. The applicant vehemently submits that the Bank has paid the disputed Rs.180 lacs and interest to the Corporation. The learned counsel for the applicant has produced the details of payments. The details of payments pertain to seven transactions the Corporation had with the Bank. The Corporation had transactions with the Bank from 26-6-93 till 1999. The last deposit made with the bank is dt. 15-7-1994.

13. The charge memo issued to the applicant is dt. 6-10-98.

14. On perusal of the details of the payment made by the Bank to the Corporation we feel that the transactions detailed at Sr.No:1, 3, 4 & 5 are not relevant as the transactions have been closed earlier to June, 1996. The interest were calculated and paid earlier to the charge memo issued to the applicant.

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15. As regards the item No.2 i.e. at Sr.

FDR 5713 dt. 5-7-93 a sum of Rs.25 lacks was deposited in the Bank. Even though the applicant submits that Rs.25 lacs have been paid to the Corporation the details are not available. However, the Bank is still due to pay Rs.7,62,904/- towards interest to the Corporation. Item No.6 & 7 are the disputed transactions indicated in the charge memo. In the charge memo it is stated that the applicant had deposited Rs.180 lacs with the Bank. However, the items 6 & 7 relates to the transactions amounting to Rs.1 crore.

16. According to the applicant

Rs.50 lacks deposited to the Bank on 15-7-94 has been paid in 10 instalments and a sum of Rs.16,64,178.05 is to be paid to the Corporation by way of interest. Likewise the interest on Rs.50 lacs amounting to Rs.19,34,589 is to be paid. This interest is for the period 12-1-96 to 17-9-99. The applicant submits that the principal of Rs.50 lakhs have been paid in monthly instalments. Payment of the principal amount relating to the transactions at Sr.No.6 & 7 were made after the respondent issued the charge memo. Therefore any subsequent development with regard to the payment transactions the applicant had with the Corporation transactions, has to be taken note of only by the disciplinary authority. It is not for this Tribunal to rely upon these submissions and say that the imputation

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made against the applicant has no basis.

17. The another grievance of the applicant is that he has been singled out in issuing the charge memo dt. 6-10-98 whereas many other officers working in other similar corporation had deposited with the Bank. From the reply it is clear that some other officers including the authority who has signed the charge memo had transactions with the Bank. We cannot reach the conclusion that the applicant had financial dealings with the Bank on behalf of the Corporation without verifying or ascertaining the soundness of the bank. In fact the applicant has furnished the details of the assets and liabilities of the Bank for the year 93-94 to 96-97. As stated by him the Bank was a registered and a recognised institution. The Reserve Bank of India has not cancelled the licence. The District Cooperative Auditor had shown the status of the Bank as Green. When that is so and when more Co-operative institutions and Corporations had financial dealings with the Bank it may not be reasonable for the respondents to state that the applicant had the financial dealings with the Bank without ascertaining its soundness. This is also for the disciplinary authority to take note of.

18. The facts are within a narrow compass. The applicant deposited a sum of Rs.180 lakhs with the Bank. In fact when the Bank failed to pay to the

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Corporation periodical interest on FDRs. Then the staff of the Corporation had recommended to the applicant to withdraw the sums deposited with the Bank.

However the applicant allowed the deposit to be continued with the Bank and his explanation is that he was satisfied with the reply given by the Bank for ^{the} delayed periodical payment of interest on the amount deposited with the Bank.

Further he submits that the decision taken by him to deposit with the Bank and also the decision taken by him to continue the deposit with the Bank can ^{only as an} be regarded as error of judgment and not as a misconduct.

19. In the first instance the respondents categorically stated that the GO dt. 18-12-1975 relied upon by the applicant is not applicable to the Bank in question. We are not concerned whether any of the cooperative organisation or public sector institutions or Govt. owned body deposited the sums with the Bank. The applicant as a Managing Director of the Corporation was expected to perform the duties in the best interest of the Corporation. In fact the Corporation has got its own bye-law's and has got necessary instructions to perform and function. Bye-law 44 relates to cash ^{balances} of the Corporation which reads as under :

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"Bye-Law No.44 : Cash

All cash balances of the corporation shall be deposited in the nearest Nationalised Bank approved by the Board. "

That means as per this Bye-law all cash balances of the corporation shall be deposited in the nearest nationalised bank approved by the board.

It is not the case of the applicant that the bank is a nationalised bank. It is not the case of the applicant that his action to deposit a sum of Rs.180 lakhs with the Bank was approved by the Board.

It is not his case that even his decision to continue the deposits ~~with~~ when the subordinate ^{staff} of the

Corporation brought ^{to} his notice that the bank was not even in a position to pay interest on the amount deposited ^{earlier} it was not approved by the board.

When certain bye-law and statutory regulations are there for a corporation to function the applicant as its Managing Director has to strictly adhere to the bye-laws of the corporation. He cannot deviate from it. He cannot ^{quote} any instances to justify his deviation. ~~As~~ already observed, the applicant has not taken approval of the board for his transactions with the Bank.

20. During the course of arguments the learned counsel for the applicant relied upon the decision of the Hon. High Court of Calcutta in the case of Virendra Prosad vs. U.O.I & Ors. reported in 1986 LAB I.C. 1961. He also relied upon the decision of the Hon. Supreme Court in the case of U.O.I. & Ors.

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vs. Shri J. Ahmed reported in 1979(1) SLR 840 to contend that the misconduct alleged against him is not at all a misconduct and at best it is only an error of judgment.

21. It is to be noted that the respondent No.2 has issued the impugned charge memo. No inquiry has been conducted. It is not known whether the applicant has submitted his explanation to the charge memo.

22. The other contention of the applicant is that there is inordinate delay of 14 months in issuing the charge memo. We do not feel it necessary to comment. The respondents have to take a decision whether there was a misconduct on the part of the applicant to issue a chargesheet. The averments made by the applicant in his rejoinder is outside the scope of this Tribunal to express any view. The period of 14 months to issue the impugned charge memo cannot at all be considered an inordinate delay. Therefore the said contention is rejected.

23. The applicant is praying to quash the charge memo dt. 6-10-98. It is for the respondent authorities to consider the explanation of the applicant to the charge memo. The Inquiry is at the initial stage. The Court or Tribunal has no jurisdiction to quash the charge memo at the initial stage. The applicant is at liberty to bring to the notice of the respondents 2 & 3 the various instances cited and contentions raised in