

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

WP(C).No. 9765 of 2012 (U)

PETITIONER:

**P.P. MUHAMMED ASHARAF
(RETD. CHIEF MANAGER
SYNDICATE BANK)
PHED ROAD, ERANHIPALAM
KOZHIKODE-673 020.**

BY ADV. SRI.T.V.AJAYAKUMAR

RESPONDENTS:

- 1. THE SYNDICATE BANK
REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR
HEAD OFFICE, MANIPAL-576 104.**
- 2. THE EXECUTIVE DIRECTOR
SYNDICATE BANK, CORPORATE OFFICE
GANDHI NAGAR, BANGALORE-560 009.**
- 3. THE GENERAL MANAGER
SYNDICATE BANK, PERSONNEL DEPARTMENT
HEAD OFFICE, MANIPAL-576 104.**
- 4. SHIR. G.G. KAMATH
(RETD. A.G.M. SYNDICATE BANK)
ENQUIRY OFFICER, MAHALASA
KARNAD, MULKI, KARNATAKA-574 154.**

BY ADV. SRI.M.P.ASHOK KUMAR

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS :-

- | | | |
|------------|---|--|
| EXT.P1 | - | COPY OF THE CHARGE SHEET NO.539/PD DATED 27.12.2010 ISSUED BY THE 3RD RESPONDENT. |
| EXT.P2 | - | COPY OF THE RELEVANT EXTRACT OF THE ENQUIRY REPORT. |
| EXT.P2(A) | - | COPY OF THE REPLY DATED 14.11.2011 SUBMITTED BY THE PETITIONER. |
| EXT.P3 | - | COPY OF THE ORDER DATED 10.01.2012 ISSUED BY THE 3RD RESPONDENT. |
| EXT.P4 | - | COPY OF THE APPEAL DATED 18.02.2012 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT. |
| EXT.P5 | - | COPY OF THECHARGE SHEET NO.057/PD DATED 09.02.2011 ISSUED BY THE 3RD RESPONDENT. |
| EXT.P6 | - | COPY OF THE RELEVANT EXTRACT OF THE INQUIRY REPORT DATED 28.07.2011. |
| EXT.P6(A) | - | COPY OF THE REPLY DATED 29.08.2011 SUBMITTED BY THE PETITIONER. |
| EXT.P7 | - | COPY OF THE CHARGE SHEET NO.471/PD DATED 02.12.2011 ISSUED BY THE 3RD RESPONDENT. |
| EXT.P8 | - | COPY OF THE WRITTEN STATEMENT OF DEFENCE DATED 15.12.2011 OF THE PETITIONER. |
| EXT.P9 | - | COPY OF THE CHARGE SHEET NO.483/PD DATED 13.12.2011 ISSUED BY THE 3RD RESPONDENT. |
| EXT.P10 | - | COPY OF THE WRITTEN STATEMENT OF DEFENCE DATED 21.12.2011 OF THE PETITIONER. |
| EXT.P11 | - | COPY OF THE LETTER DATED 14.01.2012 OF THE 3RD RESPONDENT TO THE PETITIONER. |
| EXT.P11(A) | - | COPY OF THE LETTER DATED 24.01.2012 OF THE 3RD RESPONDENT TO THE PETITIONER. |
| EXT.P12 | - | COPY OF THE REPRESENTATION DATED 04.02.2012 SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT. |
| EXT.P13 | - | COPY OF THE REPRESENTATION DATED 10.02.2012 SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT. |

[CONTD...]

- EXT.P14 - COPY OF THE REPRESENTATION DATED 06.03.2012
SUBMITTED BY THE PETITIONER TO THE 4TH RESPONDENT.
- EXT.P15 - COPY OF THE LETTER DATED 08.03.2012 OF THE 4TH
RESPONDENT TO THE PETITIONER.
- EXT.P16 - COPY OF THE REPRESENTATION DATED 12.03.2012
SUBMITTED BY THE PETITIONER TO THE 4TH RESPONDENT.
- EXT.P17 - COPY OF THE REPRESENTATION DATED 17.03.2012
SUBMITTED BY THE PETITIONER TO THE 4TH RESPONDENT.
- EXT.P18 - COPY OF THE RELEVANT EXTRACT OF THE GUIDELINES
FRAMED BY THE CENTRAL VIGILANCE COMMISSION.
- EXT.P19 - COPY OF THE LETTER DATED 06.05.2011 OF SHRI. K.
RAVEENDRANATHAN.
- EXT.P20 - COPY OF THE REPRESENTATION DATED 08.04.2012
SUBMITTED BY THE PETITIONER TO THE 4TH RESPONDENT.
- EXT.P21 - COPY OF THE REVIEW PETITION DATED 11.08.2012 FILED BY
THE PETITIONER TO THE 1ST RESPONDENT.
- EXT.P22 - COPY OF THE NOTIFICATION DATED 29.12.1998 ISSUED BY
THE CENTRAL VIGILANCE COMMISSION.
- EXT.P23 - COPY OF THE RELEVANT EXTRACT OF THE SPECIAL CHAPTER
ON VIGILANCE MANAGEMENT IN PUBLIC SECTOR BANK.
- EXT.P24 - COPY OF THE LETTER DATED 13.04.2012 OF THE CHIEF
MANAGER, SYNDICATE BANK, ERNAKULAM TOGETHER WITH
THE PROCEEDINGS DATED 02.02.2012 OF THE GENERAL
MANAGER (P), SYNDICATE BANK.
- EXT.P24(A) - COPY OF THE LETTER DATED 24.04.2012 OF THE CHIEF
MANAGER (IR) SYNDICATE BANK.
- EXT.P25 - COPY OF THE REVIEW PETITION DATED 19.11.2012 FILED BY
THE PETITIONER TO THE 1ST RESPONDENT.
- EXT.P26 - COPY OF THE OFFICE ORDER DATED 15.09.2003 OF THE
CENTRAL VIGILANCE COMMISSION.
- EXT.P27 - COPY OF THE CIRCULAR DATED 15.01.2009 ISSUED BY THE
CENTRAL VIGILANCE COMMISSION.
- EXT.P28 - COPY OF THE LETTER DATED 23.05.2000 OF THE CENTRAL
VIGILANCE COMMISSION.
- EXT.P29 - COPY OF THE ORDER DATED 09.08.2004 ISSUED BY THE
CENTRAL VIGILANCE COMMISSION.

[CONTD...]

- EXT.P30 - COPY OF THE ORDER DATED 10.08.2004 ISSUED BY THE CENTRAL VIGILANCE COMMISSION.
- EXT.P31 - COPY OF THE CIRCULAR DATED 21.07.2006 ISSUED BY THE CENTRAL VIGILANCE COMMISSION.
- EXT.P32 - COPY OF THE ORDER DATED 09.03.2010 ISSUED BY THE CENTRAL VIGILANCE COMMISSION.
- EXT.P33 - COPY OF THE ORDER DATED 27.09.2007 ISSUED BY THE CENTRAL VIGILANCE COMMISSION.
- EXT.P34 - COPY OF THE CIRCULAR DATED 11.03.2011 ISSUED BY THE CENTRAL VIGILANCE COMMISSION.
- EXT.P35 - COPY OF THE LETTER DATED 28.09.2000 ISSUED BY THE CENTRAL VIGILANCE COMMISSION.
- EXT.P36 - COPY OF THE RELEVANT EXTRACT OF THE VIGILANCE MANUAL ISSUED BY THE CENTRAL VIGILANCE COMMISSION.
- EXT.P37 - COPY OF THE REPRESENTATION DATED 26.01.2013 OF THE PETITIONER TO THE DIRECTOR, MINISTRY OF MINORITY AFFAIRS.
- EXT.P38 - COPY OF THE LETTER DATED 11.04.2013 OF THE UNDER SECRETARY TO GOVERNMENT OF INDIA TO THE CENTRAL VIGILANCE COMMISSIONER.
- EXT.P39 - COPY OF THE REPLY DATED 30.04.2013 OF THE GENERAL MANAGER (P) OF THE SYNDICATE BANK.
- EXT.P40 - COPY OF THE LETTER DATED 28.05.2013 OF THE CENTRAL VIGILANCE COMMISSION TO THE PETITIONER.
- EXT.P41 - COPY OF THE LETTER DATED 24.06.2013 OF THE NATIONAL COMMISSION FOR MINORITIES TO THE PETITIONER.

RESPONDENTS' EXHIBITS:-

- EXT.R3(A) - COPY OF THE LETTER DATED 14.10.2011.
- EXT.R3(B) - COPY OF THE LETTER DATED 31.07.2012.
- EXT.R3(C) - COPY OF THE APPLICATION DATED 27.07.2012 BEFORE THE ASST. LABOUR COMMISSIONER, ERNAKULAM.
- EXT.R3(D) - COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE HUMAN RIGHTS COMMISSION.
- EXT.R3(E) - COPY OF THE REPRESENTATION DATED 21.07.2014.

[CONTD...]

- EXT.R3(F) - COPY OF THE COMPLAINT DATED 29.09.2012 FILED BY THE PETITIONER BEFORE THE HON'BLE NATIONAL COMMISSION FOR MINORITIES.
- EXT.R3(F)(A) - COPY OF THE REPRESENTATION DATED 18.11.2013 FILED BY THE PETITIONER BEFORE THE LOKSABHA.
- EXT.R3(F)(B) - COPY OF THE REPRESENTATION FILED BY THE PETITIONER BEFORE THE HON'BLE PARLIAMENTARY COMMITTEE.

//TRUE COPY//

P.A. TO JUDGE

sp

K. VINOD CHANDRAN, J.

W.P(C). No.9765 of 2012-U

Dated this the 19th day of November, 2015.

JUDGMENT

The petitioner, who is retired on 31.01.2012, is aggrieved with Exts.P7 and P9 charge sheets. The charge-sheets had initiated an enquiry against the petitioner, for the period in which the petitioner, a Chief Manager of the Bank, was the Branch Manager of Kozhikkode Cherootti Road Branch during the period between 19.09.2005 to 04.11.2008 and when he was in charge as Branch Manager at the Kannur Main Branch during the period between 05.11.2008 to 10.10.2009. The petitioner is aggrieved with the long delay in initiating the proceedings. He also has a contention that the very same period, was the subject matter of two earlier enquiries, which concluded in imposition of two separate punishments; which were initiated by Exts.P1 and P5 Charge Sheets.

2. The petitioner has yet another contention that the

charges now levelled against the petitioner was the culmination of a Vigilance Enquiry conducted as per the Vigilance Manual. The extract of the said Manual is produced as Exts.P18 and P23; which is available in the website of the Central Vigilance Commission. The petitioner has a contention that the procedure as delineated in Exts.P18 and P23 has not been complied with.

3. At the outset, what is to be looked at, is to whether the proceedings initiated by the respondent Bank as per Exts.P7 and P9, is under the Vigilance Manual. Ext.P18 speaks of the organisation and implementation of anti corruption measures. The organisational structure consists of the Administrative Vigilance Division set up in the Ministry of Home Affairs, to serve as a Central Agency to assume overall responsibility for anti-corruption measures, with each Ministry/ Department required to nominate an officer as the Chief Vigilance Officer. It also speaks of the establishment of the Central Vigilance Commission. The petitioner has produced only extracts of the Manual and it fails to give a clear picture of whether all departmental enquiries in Public Sector Banks are

to be done in accordance with the Manual. On page 12 it is stated so:

"In the Public Sector and Nationalised Banks also, it is desirable that a senior officer, preferably not below General Manager level, is appointed as Chief Vigilance Officer to function directly under the Chief Executive."

Hence, the Manual is not mandatorily to be followed in Public Sector Banks.

4. The procedure delineated in Ext.P18 is one with respect to the enquiries carried on by the said Vigilance Division as initiated by the recommendation of any organisation, or by the Chief Vigilance Officer of the organisation which comes under paragraph 1 of Ext.P18.

5. The present enquiry against the petitioner is not one initiated by the Central Vigilance Commissioner nor one recommended for enquiry by the respondent Bank, to the Administrative Vigilance Division or even carried out by the Chief Vigilance Officer. A reading of the charge sheets at Exts.P1,P5,P7 and P9 indicates that the enquiry proceeded against the petitioner was under Regulation No.6 of Syndicate Bank Officers Employees (Discipline and Appeal Regulations),

1976 [for brevity, Regulations of 1976]. There is no reference in either of the show cause notices to any Vigilance Enquiry conducted nor is a modicum of evidence produced by the petitioner as to whether such an enquiry was recommended by the respondent Bank or carried on by the organisational structure envisaged by Exts.P18. Ext.P23 also delineates the procedure for conducting such enquiry, which even otherwise the employer is required to follow. The same is a necessary concomitant of compliance of principles of natural justice and is reduced to writing in the Regulation of 1976. In such circumstance, this Court is unable to accept the contention of the petitioner that the procedure delineated at Exts.P18 and P23 has to be followed by the respondent Bank in the conduct of the enquiry.

6. But however, the Regulations of 1976 has to be followed. An examination of the procedure is premature; since the petitioner has now been only served with a Charge Sheet. The enquiry itself is at the preliminary stage, where the petitioner has been directed to give explanation to the charges levelled and the statement of imputations. There is no basis for

the allegation that the procedure is not followed.

7. The petitioner contends that the first stage of advise as delineated in Exts.P18 and P23 has not been afforded to the petitioner and the consultation under Regulation 19 has also not been informed to the petitioner. With respect to the first stage advise, this Court has already found that the Central Vigilance Commission guidelines are not applicable to the respondent Bank and the respondent Bank has proceeded under the Regulations of 1976. As to the second advise at Clause 19, the same has to be made only after the enquiry and a finding of guilt has been entered into by the Disciplinary Authority. That stage has not reached now, since the petitioner has obtained stay of the Enquiry itself, which was initiated as per Exts.P7 and P9 Charge-Sheets.

8. The learned counsel for the petitioner would harp on the duplication of charges. Ext.P1 show cause notice refers specifically to the recommendation for sanction of two credit facilities. Ext.P1 charge sheet was followed by a disciplinary enquiry, which ended in Ext.P3 punishment of reduction of basic pay by three stages. Ext.P5 is the second charge sheet

issued with respect to the very same period, but however with respect to other transactions, in which discrepancies were detected by the Bank. Ext.P5 also culminated in imposition of punishment of reduction of basic pay by three stages, which order has not been produced herein. The said order is said to have been issued during the pendency of the writ petition. In any event, both the said instances of issuance of charge sheet, enquiry and imposition of punishment is not up for consideration in the above writ petition.

9. The petitioner herein specifically assailed Exts.P7 and P9 show cause notices issued on 02.12.2011 and 13.12.2011. Ext.P7 again is with respect to the same period, ie. 19.09.2005 to 14.11.2008, when the petitioner was working as a Manager at the Cherooti Road Branch, Kozhikkode. A reading of Ext.P7 would indicate that the charges *inter alia* are with respect to certain banking transactions, which the petitioner as the Branch Manager, sanctioned. The petitioner contends that some of the charges against the petitioner in Ext.P7 is similar to that in Ext.P5 also. The Charge Sheet at Ext.P7 is said to have been modified by Ext.R3(b), produced by the Bank. In

any event, it is not for this Court is look into each of the charges and find, if there has been any duplication. The petitioner definitely could appraise the Enquiry Officer, at the stage of enquiry, on the basis of the documents with respect to the earlier enquiry, specifically the charge sheet and the order of punishment passed and even the enquiry report, to show that the said charges were once proceeded against the petitioner, and either acquitted or found guilty. The petitioner could at the stage of evidence produce the relevant records and convince the Enquiry Officer of the duplication of charges, if any.

10. The petitioner also had given objections to the show-cause notice before the Disciplinary Authority, which was considered by the Disciplinary Authority and a charge sheet was issued at Exts.P7 and P9. The respondent Bank has initiated the proceedings under the Regulations of 1976; specifically under Regulation No.6, which talks about the procedure for imposing major penalties.

11. This Court is of the opinion that Article 226 of the Constitution of India cannot be invoked to interdict a valid

enquiry initiated by the Bank under the Regulations framed for its employees. If at all the petitioner has a case of duplication of charges, the same has to be raised and proved before the Enquiry Officer or the Disciplinary Authority. The petitioner's remedy under Article 226 of the Constitution of India, at the preliminary stage is interdicted by the binding precedents of the Hon'ble Supreme Court in the following decisions:

Chanan Singh v. Registrar, Co-operative Societies, Punjab and others [AIR 1976 SC 1821], State of Uttar Pradesh v. Shri Brahm Datt Sharma and another [AIR 1987 SC 943], Nagaraj Shivarao Karjagi v. Syndicate Bank, Head Office, Manipal and another ([1991] 3 SCC 219), State Bank of India and others v. Samarendra Kishore Endow and another [1994 (2) SCC 537], Union of India and others v. Upendra Singh [1994] 3 SCC 357, Union of India and another v. Ashok Kacker ([1995] suppl 1 SCC 180), Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh and others [AIR 1996 SC 691], Dy. Inspector General of Police v. K.S. Swaminathan ([1996] 11 SCC 498), State of Punjab v.

V.K. Khanna and others ([2001] 2 SCC 330), State Bank of India and another v. Bela Bagchi and othe,rs ([2005] 7 SCC 435), Union of India and another v. Kunisetty Satyanarayana ([2006] 12 SCC 28), State of Orissa and another v. Sangram Keshari Misra and another (2010 (13) SCC 311) and Secretary, Ministry of Defense v. Prabhash Chandra Mirdha (AIR 2012 SC 2250).

The enquiry proceedings though initiated immediately before retirement; by 20.3(iii) of the Syndicate Bank (Officers') Service Regulations, 1979 permits the disciplinary proceedings to be continued and the delinquent employee deemed to be continued in service only for that purpose and not for any pay and allowances.

The writ petition would stand dismissed, no costs.

Sd/-

**K. VINOD CHANDRAN,
JUDGE.**

//True Copy//

P.A. to Judge.