

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.40714 of 2002

M.Babu

...Petitioner

-vs-

The Assistant General Manager and
Disciplinary Authority
Bank of India
Zonal Office
Chennai-86

...Respondent

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records relating to the show cause notice Ref.ZODA:564 dated 31.10.02 of the respondent, quash the same.

For Petitioner : Mr.S.Venkataraman

For Respondent : Mr.N.Balasubramanian

सत्यमेव जयते
ORDER

This writ petition has been directed against the impugned show cause notice dated 31.10.2002 issued by the respondent-Assistant General Manager, Chennai Zone and disciplinary authority, Bank of India, in and by which the respondent, as the disciplinary authority, on receipt of the report of the enquiry officer holding the petitioner guilty of all the three charges, has formed a provisional opinion to impose the proposed penalty of dismissal in terms of 19.6 (a) of the Bipartite settlement dated 10.4.2002.

2. Learned counsel for the petitioner submitted that immediately on receipt of the report of the enquiry officer, the delinquent should be first communicated with the findings of the enquiry officer and thereupon he may be given an opportunity to put forth his objections to the findings of the enquiry officer and then only a final order should be passed. It is well settled legal position that at the stage of communication of the findings of the enquiry officer inviting further explanation from the delinquent, the disciplinary authority should not disclose the proposed penalty, as the opportunity available to the petitioner to give his written representation to the report of the enquiry officer saying that the findings reached by the enquiry officer are not correct would become an empty formality. Adding further, it was contended that after the completion of enquiry, it has been settled by the Apex Court as well as by this Court that the disciplinary authority, after the receipt of the report from the enquiry officer, should call for an explanation from the delinquent as to why the report of the enquiry officer should not be accepted, by furnishing a copy of the report of the enquiry officer. Only thereafter, the disciplinary authority should apply his mind. In the present case, when the petitioner was not furnished with a copy of the report of the enquiry officer to submit his explanation as to why the report of the enquiry officer should not be accepted, the issuance of the impugned show cause notice proposing punishment along with the copy of the report of the enquiry officer by the disciplinary authority clearly shows that the further representation going to be submitted by the petitioner criticising the findings of the enquiry officer would not serve any purpose. Finally, it was contended that when the petitioner has not even submitted his explanation to the report of the enquiry officer, the disciplinary authority should not have disclosed the proposed punishment. As the present impugned order clearly exposes bias and pre-determination, the same is liable to be interfered with. In support of his submissions, he has also relied upon the judgment of this Court in the case of L.Manickavasagam v. Tamil Nadu Electricity Board represented by Chief Engineer (Distribution), Madurai, 1998 (2) L.L.N. 923, wherein this Court has held that without furnishing a copy of the report of the enquiry officer, the disciplinary authority should not come to any proposed punishment. For all these reasons, he sought for allowing the writ petition.

3. Learned counsel appearing for the respondent, strenuously supporting the impugned notice dated 31.10.2002, submitted that it is a peculiar case where the petitioner, while serving as a Clerk cum Typist, has caused pecuniary loss of Rs.2,20,000/- to the bank in respect of the alleged transaction on 19.10.91, since, while joining hands with his wife, misusing the cheque leaf belonging to Mr.M.H.Babu, which was kept in his possession, by aiding and abetting

his wife Smt.Revathy Babu, he had withdrawn a sum of Rs.2,20,000/- from the saving bank account of Mr.M.Kalyanasundaram and Mrs.V.Geetha. Therefore, a departmental enquiry was instituted against him in respect of three charges by appointing an enquiry officer. The said enquiry officer, after giving the petitioner all reasonable opportunities to defend the charges levelled against him, by taking into consideration the evidence that were brought into the records of the enquiry, submitted his findings on 30.9.2002 holding him guilty of the charges levelled against him under the charge sheet dated 23.4.96. When the petitioner also took part in the enquiry proceedings along with the defence representative, who was also an Advocate, that shows that the respondent Bank has given a fair and reasonable opportunity to the petitioner. However, on completion of the enquiry, when the enquiry officer submitted his report holding him guilty of all the charges, the disciplinary authority issued the impugned second show cause notice concurring with the findings of the enquiry officer, of course, proposing the punishment. However, it does not mean that the petitioner has been imposed with any punishment. Therefore, it is not open to him to contend that he has been visited with any punishment, as a result, he has suffered any prejudice. The settled law, as on the date of issuing the impugned notice, shows that when the prejudice caused to the delinquent has not been made out, the non issuance of the second show cause notice, as he pleaded, by furnishing the enquiry officer's report, could not be a ground for setting aside the impugned order. Adding further, he has submitted that in a similar and identical case, a Division Bench of this Court in the case of General Manager, Rani Mangammal Transport Corporation Limited., Dindigul v. Victor, 2003-III-LLJ 994, when the enquiry officer's report has been sent by the disciplinary authority along with the notice calling upon the delinquent to offer his explanation on the proposed punishment, has come to the conclusion that the non issuance of the second show cause notice prior to forming opinion to the punishment to be inflicted cannot be a ground for exercising the power under Article 226 of the Constitution of India. In the present case, the petitioner was not imposed with any punishment. But he has been issued with only a show cause notice. Still it is open to the petitioner to convince the disciplinary authority by submitting a detailed explanation asking the disciplinary authority not to accept the report of the enquiry officer, in which event the disciplinary authority may also agree with the written explanation that has been called for from the petitioner. Without even submitting his explanation, the petitioner cannot come to this Court alleging bias that he would be dismissed from service. Concluding his arguments, he has further submitted that if the petitioner submits his explanation to the impugned notice, the respondent will consider the same impartially and will pass appropriate orders.

4. But this Court is unable to agree with the said contentions. No doubt, it is a case of misappropriation of public money. But the law says that a person against whom departmental proceedings have been initiated should be given a reasonable and fair opportunity to vindicate his charges. It is not in dispute that the petitioner was issued with the charge memo dated 23.4.96 containing three charges. He also appeared along with an Advocate before the enquiry officer for defending the charges. That shows that the petitioner was given a reasonable opportunity to participate in the enquiry proceedings. However, when the enquiry officer, on completion of the enquiry, submitted his report holding him guilty of all the three charges, the disciplinary authority, while furnishing the copy of the report of the enquiry officer, ought not to have proposed the punishment as mentioned in the impugned show cause notice. A reading of the second show cause notice clearly shows that he has come to a provisional conclusion to impose the major punishment, inasmuch as a reading of paragraph-5 of the impugned show cause notice shows that he has concurred with the findings of the enquiry officer that the charges levelled against the petitioner vide charge sheet dated 23.4.96 stood proved and the bank has also suffered a pecuniary loss of Rs.2,20,000/- because of his fraudulent act of charge no.2 and also indicated the proposed punishment of dismissal for all the three charges. That shows that the disciplinary authority, without even giving an opportunity to the petitioner to controvert the findings of the enquiry officer, ought not to have reached such a conclusion. However, since the charges levelled against the petitioner appear to be serious in nature, this Court, by setting aside the impugned show cause notice which has proposed the provisional punishment, hereby directs the disciplinary authority to issue a show cause notice calling upon the petitioner to submit his detailed written representation to the report of the enquiry officer and thereafter to proceed further in accordance with law. In any event, since the matter is pending for quite a long time, the disciplinary proceedings shall be completed within a period of four months from the date of receipt of a copy of this order. With this direction, the writ petition stands disposed of and the second show cause notice stands quashed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

ss

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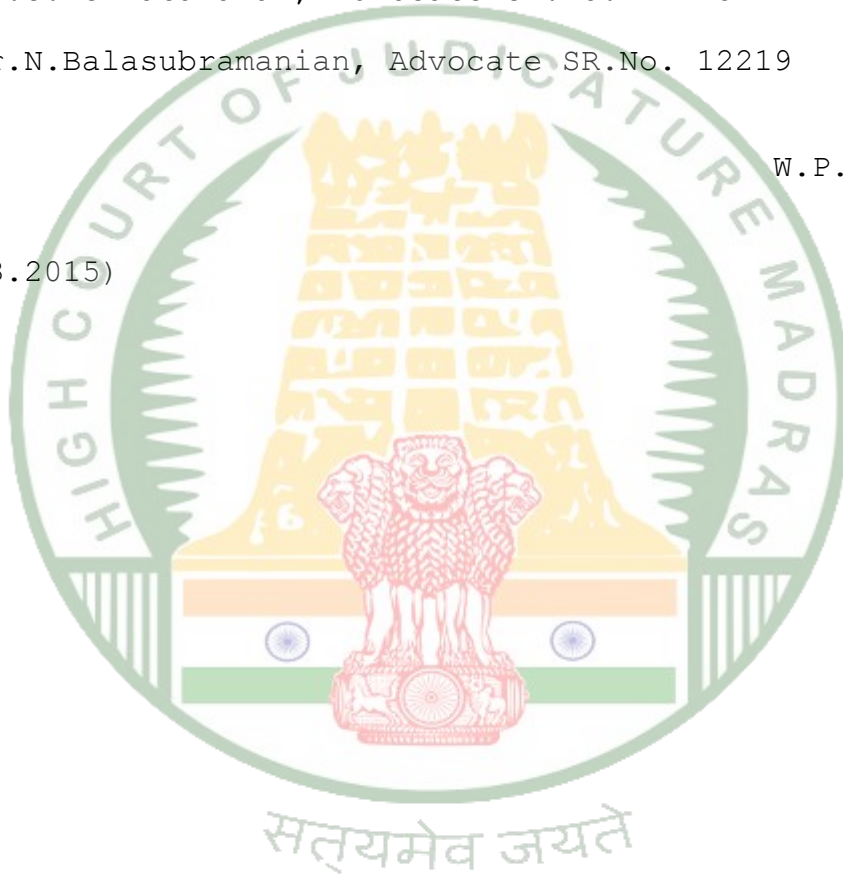
The Assistant General Manager and
Disciplinary Authority
Bank of India
Zonal Office
Chennai 600 086

1 CC to Mr.S.Venkataraman, Advocate SR.No. 12223

1 CC to Mr.N.Balasubramanian, Advocate SR.No. 12219

W.P.No.40714 of 2002

KGK (CO)
PSI (25.03.2015)



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