IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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Writ Petition No.25646 of 2010

Between

M.Jagga Rao

… Petitioner

and

Bank of India, Bandra (East),
Mumbai 051,
Rep. by its Executive Director
and another

… Respondents

DATE OF JUDGMENT PRONOUNCED: 30-7-2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE R. KANTHA RAO

1	Whether Reporters of Local newspapers may be allowed to see the Judgment?	Yes/No
2	Whether the copies of judgment may be marked to Law Reports/Journals	Yes/No
3	Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?	Yes/No

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.25646 of 2010

Order:

This writ petition is filed under Article 226 of the Constitution of India seeking a Writ of *mandamus* declaring the penalty order vide Ref.No.GCT:DA:029, dated 23-4-2010 issued by the Disciplinary Authority imposing the compulsory retirement from service as wholly illegal and in violation of principles of natural justice and to declare the proceedings of the Appellate Authority vide Ref.No.NS: AA:029 communicated to the petitioner under the covering letter vide Ref.No.VZO:IR:097 dated 11-6-2011 confirming the order of the Disciplinary Authority as illegal, arbitrary and consequently to set aside the same and also to declare the letter No.VZO:PERS:JSK:1207 dated 11-12-2010 in which pension option was refused as illegal, arbitrary and unjust and consequently to direct the respondents to reinstate the petitioner into service with all consequential benefits including the arrears of salary by duly accepting the pension option.

2. Heard Sri M.Jagga Rao, petitioner/party-in-person and Sri K.Lakshmi Narayana, learned Standing Counsel appearing for the respondents-Bank.

3. While the petitioner was working as Senior Branch Manager, Gajuwaka, he was placed under suspension by order dated 17-9-2008 alleging in Article of Charge No.1 that

while he was working he conducted pre-sanction inspection of units in respect of certain loans relating to K.V. Appala Naidu and others along with G.V. Kameshwar Rao and B.D.V. Prasad, officers of the branch and recommended the sanction of cash credit limits of Rs.50 lakhs each for brick business and subsequently, it was transpired that the units did not exist in the given addresses. The charges which are ancillary to the main charge include that the petitioner ignored that all the units are registered with DIC as SSI Units on the same date i.e. 09-4-2007 two days after submission of loan applications to the branch and one day prior to the petitioner recommending the proposal to the Zonal Office for sanction of loan. Further, that the petitioner ignored that the guarantor in the loan accounts of Madi Kondala Rao and Pandari Srinivas Rao got the property which was mortgaged to the bank as collateral security by gift settlement dated 07-4-2007 and it was over-valued. Further, that the petitioner did not obtain status report on guarantors from SME Branch, Visakhapatnam Zone and the existing bankers of the guarantors did not verify scale of finance and evaluate the project, did not enclose vital documents viz. legal opinion, valuation report, lease deeds along with proposals while sending the proposals to the Zonal Office for sanction of limits.

4. The Article of Charge No.II is that the petitioner recommended jointly with G.V. Kameshwara Rao, officer of

the branch, a clean demand loan of Rs.50 lakhs to Peela Venkata Jagga Rao against equitable mortgage of commercial property of P.Peela Rama Trinadha Rao and Peela Shyam Ganesh situated at Ward No.13, Door No.11-1-19 admeasuring 50 square yards with three storied building to meet working capital requirement for payment of renewal of license fees and other expenses for running wine/liquor shops at Srikakulam and Visakhapatnam Districts and recommended clean demand loan to the borrower even though the borrower did not have a single licence in his name, did not justify Rs.62.78 lakhs, gross annual income of the borrower shown in the proposal and as per the Income Tax returns filed by the borrower for 2004-05 his gross annual income was only Rs.1.19 lakhs and he also did not justify the proposed EMI of Rs.2.84 lakhs per month, as per Income Tax returns filed by the borrower for 2004-05, his gross annual income was only Rs.1.19 lakhs. Further, the petitioner did not mention the source of income of the borrower to make good the difference between the envisaged immediate repayment of Rs.80.47 lakhs towards licence fee with total working capital requirement of Rs.479.00 lakhs and the proposed clean demand loan.

5. Thereafter, an enquiry was initiated and the substantial charges were held to be proved and the Disciplinary Authority imposed major penalty of “Compulsory Retirement” with effect from 23-4-2010 against the petitioner

in terms of Regulation 4(h) of Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976 (the 1976 Regulations, for short). The petitioner was placed under suspension and was continued in suspension from 26-9-2008 till the date of imposition of compulsory retirement on 23-4-2010.

6. It is submitted by the petitioner that as per the Amended Regulation 17 of the 1976 Regulations, an appeal lies and the petitioner preferred an appeal within 45 days and as per rules, the Appellate Authority has to dispose of the appeal within 90 days from the date of receipt of the appeal. The petitioner preferred the appeal on 17-6-2010 and the same was received by the Appellate Authority on 18-6-2010. Although, the period of 90 days had been elapsed, no decision had been taken by the Appellate Authority on the said appeal. According to the petitioner, he made enquiries and the enquiries revealed that the Appellate Authority kept the appeal pending without passing any orders. Under the above circumstances, the petitioner filed the present writ petition.

7. It is the version of the petitioner that the proposed loan accounts were investigated by the Investigating Officer and basing on the report of the Investigating Officer, the petitioner recommended the loans. Further, after coming to know about the irregularities relating to sanction of loan, the petitioner protected the interest of the bank by recovering the entire amount including interest and therefore, according to

him, the charges framed against him are misconceived. It is further submitted by him that in respect of disciplinary proceedings against D.V.S.K. Murthy, the then Zonal Manager, the Executive Director was nominated as Disciplinary Authority, whereas in respect of the petitioner, the General Manager has been designated as the Disciplinary Authority. His version is that with regard to the events pertaining to composite cases on the allegation of accommodating K.V.A. Naidu and group borrowers, there cannot be two Disciplinary Authorities. Therefore, the petitioner states that the entire disciplinary proceedings are vitiated as they are in violation of Regulation No.10 of the 1976 Regulations. It is further submitted by him that altogether enquiry was held against ten employees in respect of the very same loan transactions and all were imposed very lesser punishment, whereas the major punishment of 'compulsory retirement' was imposed against the petitioner. It is submitted by him that against B.D.V. Prasad, a penalty of 'censure' was imposed, in respect of G.V. Kameshwar Rao, penalty of reduction of two increments with cumulative effect was imposed, against M.Subhakar, Senior Manager, a minor penalty of 'reduction to a lower stage in the time scale of pay for a period of two years without cumulative effect and not adversely affecting the officer's pension' was inflicted, and against O.S. Rama Rao, a minor penalty of 'censure' was imposed. Thus, according to the petitioner, though disciplinary enquiries were held in respect of the aforesaid employees in respect of the identical charges, in respect of the same loan accounts the petitioner was only imposed a major punishment of 'compulsory retirement' which is liable to be set aside in the present writ petition on the ground of disparity in the punishment among the employees equally charged.

8. The respondents-Bank filed counter, *inter alia*, contending as follows:

(a) Against the petitioner, G.Chandrasekharan, Assistant General Manager (Retired) was appointed as Enquiry Officer and on receiving the enquiry report, the petitioner was asked to submit written representation.

In pursuance thereof, the petitioner submitted representation dated 22-02-2010. Thereafter, the Disciplinary Authority arrived at the conclusion that the petitioner is responsible for various irregularities and in respect of the charges which were held proved, imposed the punishment of compulsory retirement considering the gravity of misconduct established against the petitioner.

(b) The petitioner submitted an appeal to the Appellate Authority. However, as the petitioner was imposed major penalty, the case of the petitioner has to be examined from the vigilance angle. Hence, the time limit prescribed under Clause 17 of the 1976 Regulations will not apply in the case of petitioner. The petitioner rushed to this Court even while the appeal is pending consideration by the Appellate Authority. Having availed alternative remedy of filing appeal, the writ petition is not maintainable and is liable to be dismissed. Clause 10 of the 1976 Regulations vests discretion in the competent authority to make an order directing common disciplinary proceedings and no orders under the said clause had been issued directing common disciplinary proceedings. Therefore, the contention of the petitioner that the common enquiry should have been held against all the delinquents is not tenable. The charges against the petitioner were held proved in the enquiry against the petitioner on the basis of the documentary and oral evidence. Having regard to the gravity of the misconduct, the Disciplinary Authority rightly imposed the punishment of compulsory retirement against the petitioner. Contending as above, the respondents-Bank sought to dismiss the writ petition.

9. I have perused the enquiry report. Indisputably, the material brought on record by the respondents-Bank against the petitioner during the course of enquiry discloses that the petitioner did not take requisite care in recommending the loans relating to the Articles of Charges 1 and 2. There are lapses on the part of the petitioner. Therefore, having gone through the entire material placed on record, I am of the view that the petitioner cannot be totally exonerated of the charges for which he was found guilty.

10. One of the important contentions raised by the petitioner is that as per Regulation 10 of the 1976 Regulations, discretion is vested in the competent authority to make an order directing the common disciplinary

proceedings. But, in the instant case, no such orders were issued directing common disciplinary proceedings.

As to this, the contention of the respondents-Bank is that it is only an enabling provision, the provision does not prohibit directing independent disciplinary proceedings against the employees/officers of the Bank in respect of the same loan transactions. The plain reading of the aforesaid Regulation indicates that the said clause in the Regulation is not mandatory. However, when several officers/ employees were attributed with misconduct in respect of the same loan transactions, to properly appreciate the evidence and to understand the extent of involvement of each charged employee, the competent authority, in the opinion of this Court, ought to have directed common enquiry.

In the instant case, on account of conducting the disciplinary proceedings separately, it can be said that to certain extent the case of the petitioner is prejudiced.

11. Another contention advanced by the petitioner is that there is disparity in the punishment. According to the petitioner, all the charged employees are more or less equally involved in the impugned loan transactions.

But, in respect of the other officers/employees, meagre punishments were inflicted whereas the major penalty of compulsory retirement was imposed on the petitioner.

The Disciplinary Authority in this case totally exonerated the Zonal Manager, who is the Loan Sanctioning Authority. The contention of the petitioner is that the enquiry report reveals that the loans were referred to the branch of the petitioner for processing of the same by the sanctioning authority i.e., the Chief Manager (Credit), Zonal Office at the behest of the Zonal Manager. Admittedly, the pre-sanction inspection of units was jointly conducted by

G.V. Kameshwara Rao, B.D.V. Prasad and also the petitioner. After they were found guilty of the charges levelled against them, they were given lesser punishment. In the matter of inspecting the loan documents, not only the petitioner but the remaining charged officers were also responsible. Therefore, there is no reason as to why major punishment of compulsory retirement was required to be imposed against the petitioner.

12. In Civil Miscellaneous Petition No.41645 of 2005 (*Kaushal Kishore Chaturvedi v. U.P.S.R.T.C.*) relied on by the petitioner/ party-in-person, it was observed by the learned Single Judge of the Allahabad High Court as follows:

> "However, it is quite distressing to note that firstly the appointing authority of the petitioner and other employees involved in the incident appointed different inquiry officers to enquire into the matter. In respect of one incident involving several employees disciplinary proceedings should normally be initiated simultaneously and joint inquiry by one and the same inquiry officer should be held."

13. The Supreme Court in **Rajendra Yadav v. State of M.P.**[1] dealing with similar issue held as follows:

> "12. The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same

incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences.

13. … … … … … … … … … …

14. … … … We have already indicated that the action of the Disciplinary Authority imposing a comparatively lighter punishment to the co-delinquent Arjun Pathak and at the same time, harsher punishment to the Appellant cannot be permitted in law, since they were all involved in the same incident. Consequently, we are inclined to allow the appeal by setting aside the punishment of dismissal from service imposed on the Appellant and order that he be reinstated in service forthwith. … … …"

14. In the instant case also, the Disciplinary Authority imposed severe punishment of retiring the petitioner compulsorily from service while imposing the lesser punishments to the remaining charged officers.

15. Another crucial aspect which requires to be addressed in the present writ petition is that whether on account of the availability of the alternative remedy by way of an appeal to the petitioner and the petitioner having availed the same, can he file the present writ petition without waiting for the result of the appeal. In the instant case, against the punishment imposed to him by the Disciplinary Authority after conclusion of the disciplinary enquiry against him, the petitioner preferred an appeal under the Rules, the appeal is required to be disposed of within 90 days from the date of presenting the appeal.

But, the petitioner filed the present writ petition contending that the appeal was simply kept pending without passing any orders even after 90 days and therefore, no justice could be done to him in the appeal preferred by him.

The writ petition was filed in the year 2010. It came up for hearing before several Benches and ultimately came to be heard by this Court. At no point of time either of the parties did bring to the notice of the Court about the pendency of the appeal filed by the petitioner on the date of filing of the present writ petition. Therefore, the question would arise as to whether the writ petition is maintainable or not, having regard to the facts and circumstances of the present case.

16. Normally, if the alternative remedy is available to a party, the party has to avail the alternative remedy if it is equally efficacious. However, it is settled that the existence of alternative remedy is not the absolute bar for a party to invoke extraordinary power of this Court under Article 226 of the Constitution of India. The availability of alternative remedy to a litigant may be a factor which this Court has to consider before entertaining a writ petition filed under Article 226 of the Constitution of India but that itself does not preclude this Court to entertain a writ petition despite the petitioner having an efficacious alternative remedy.

In other words, the availability of alternative remedy does not take away the jurisdiction of this Court to grant relief under Article 226 of the Constitution of India, however,

in exceptional circumstances. The order of compulsory retirement was challenged by the petitioner in the present writ petition mainly on the ground of disparity of punishment among the co-delinquents.

17. In this context, it would be necessary to refer to the following judgment of the Supreme Court. I n **S.J.S. BUSINESS ENTERPRISES (P) LTD. v. STATE OF BIHAR**[2], wherein a party suppressing the material fact, namely, the pendency of a civil suit, filed the writ petition. After obtaining interim order in the writ petition, the petitioner had withdrawn the suit and the suit was not pending by the time when the writ petition was heard. The Supreme Court held that if the writ petition was otherwise maintainable, it could not be rejected on the ground of suppression of the fact of filing of the suit.

18. The Supreme Court further held in **S.J.S. BUSINESS ENTERPRISES (P) LTD.** (2 *supra*) as follows:

> "Existence of alternative remedy does not impinge on the jurisdiction of the High Court to hear the matter if it is otherwise possible. It is only a factor to be considered by the High Court while exercising its discretionary jurisdiction under Article 226 of the Constitution of India, the consideration being one of public policy and the existence of parallel jurisdiction in another Court. So, where a party has initiated an alternative remedy but not pursued it, the High Court can call upon the party to elect either the alternative remedy or the writ petition. Hence, if the party has withdrawn from the alternative remedy by the time the writ petition was heard, the writ petition should not be rejected if otherwise maintainable, even though the party had not disclosed pendency of the alternative remedy when it filed the writ petition."

19. In the instant case, the petitioner, however, did not

suppress the fact that he preferred the appeal and the same is pending at the time of filing of the writ petition.

The petitioner appeared in person and made his submissions in the writ petition. Though in the counter

an objection was taken about availing the alternative remedy, the learned Standing Counsel for the respondents-Bank also did not bring it to the notice of the Court even when the arguments were advanced after 5 years.

If the writ petition is dismissed driving the petitioner to avail the alternative remedy at this length of time, it would certainly cause undue hardship and irreparable injury to the petitioner. Further, obviously the petitioner did not pursue the appeal after filing of the writ petition. Therefore, I am of the considered view that despite availing the alternative remedy, the writ petition filed by the petitioner is maintainable.

20. This Court, upon considering the involvement of the other charges employees in the transactions relating to the same loan accounts and having regard to the aforementioned judgments relied upon by the petitioner,

is of the view that the Disciplinary Authority treated the petitioner differentially by imposing a severe punishment. Further, there is no dispute about the fact that soon after the irregularities in advancing the loans came to light the petitioner recovered entire loan amounts with interests at the rate of 8% per annum and all the loan accounts were closed. Therefore, the punishment imposed against the petitioner is tainted with disparity and is also grossly disproportionate. If for imposing punishment the matter is remitted to the Disciplinary Authority, it would consume lot of time without serving any purpose.

21. Consequently, the punishment of compulsory retirement imposed against the petitioner is set aside. The punishment of reduction of two annual increments with cumulative effect is imposed on the petitioner. The period under which the petitioner was under suspension shall be treated as "on duty". The petitioner shall be treated as continued in service till the date on which he normally attains the age of superannuation. If the petitioner has not attained the age of superannuation, he shall be reinstated into service. If the petitioner has attained the age of superannuation, his pensionary benefits shall be calculated basing on the punishment imposed in this writ petition against the petitioner and shall be paid to him. The appeal, if any, is still pending, it shall stand disposed of by virtue of the order passed in the writ petition.

22. In the result, the writ petition is partly allowed without any order as to costs. The miscellaneous petitions, if any, pending in this writ petition shall stand closed.

R.KANTHA RAO, J.

30th July, 2015.
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Note:-
Issue C.C. today.

(B/o)
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HON'BLE SRI JUSTICE R.KANTHA RAO

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Writ Petition No.25646 of 2010

30th July, 2015.
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[1] 2013 (2) SCALE 416

[2] (2004) 7 SCC 166