

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2016

(Reserved on 29.02.2016)

Coram

The Hon'ble Mr. Justice T.RAJA

W.P. No.4344 of 2013

S.V.Sankar

... Petitioner

Vs

1.The General Manager Network-2,  
Disciplinary Authority (D.A.),  
Local Head Office, Circle Top House,  
16, College Lane, Chennai - 600 006.

2.The General Manager Network-2,  
Appointing Authority ,  
Sate Bank of India, Circle Top House,  
16, College Lane, Chennai - 600 006.

3.The Chief General Manager &  
Appellate Authority,  
State Bank of India, Circle Top House,  
16, College Lane, Chennai - 600 006.

... Respondents

Prayer:- Petitions filed under Article 226 of the Constitution of India praying to issue Writ of certiorarified mandamus to call for the records relating to the orders dated 07.11.2012 issued by the first respondent (Ex.-A) bearing No.VIG/KE/137 and proceedings dated 23.01.2013 (Ex.-B) bearing No.VIG/KE/171 issued by the second respondent and to quash the same as being illegal, arbitrary and contrary to the order of this Court dated 23.07.2012 in W.P.No.6388/2011 and consequently to direct the respondents to not to proceed further in respect of charge sheet dated 06.10.2008.

For petitioner

.. Mr.N.G.R.Prasad  
for M/s.Row & Reddy

For Respondents

.. Mr.S.Ravindran

O R D E R

By way of filing this writ petition, the petitioner seeks to quash the impugned notice dated 07.11.2012 calling upon him to submit his explanation with regard to the enquiry report dated

25.11.2012 submitted by the Enquiry Officer, with a consequential direction to the respondents not to proceed further in respect of charge sheet dated 06.10.2008.

2. The petitioner was initially appointed as Stenographer in the year 1979 at the respondent Bank. While he was working as Manager on promotion at Ariyalur Branch, he was issued with a charge sheet dated 06.10.2008 alleging certain irregularities while granting loans. Thereafter, the petitioner had also submitted his explanation on 21.11.2008 denying all the charges levelled against him. The respondent Bank, on receiving such explanation, appointed the Enquiry Officer, who, in turn, submitted his report on 25.05.2010. Thereafter, on receipt of such report, the Disciplinary Authority, vide order dated 15.09.2010, ordered for Denovo enquiry on the ground that there were certain infirmities in the departmental enquiry and on appeal, the third respondent herein / Appellate Authority confirmed the same vide order dated 21.02.2011

3. Challenging the above said orders of the respondents 1 and 3, the petitioner had filed a Writ Petition No.6388 of 2011, whereby, this Court, by order dated 23.07.2012, directed the Disciplinary Authority to furnish the details of infirmities which necessitated ordering Denovo enquiry within a period of eight weeks from the date of receipt of a copy of the order. Thereafter, the Disciplinary Authority issued a fresh notice dated 07.11.2012 which is impugned herein calling upon the petitioner to submit his explanation with regard to the enquiry report. Challenging the said notice, the present writ petition has been filed with a prayer cited supra.

4. Assailing the said impugned order, Mr.N.G.R.Prasad, learned counsel appearing for the petitioner, submitted that the Disciplinary Authority, without complying the order passed by this Court in W.P.No.6388 of 2011, dated 23.07.2012, adopted a novel device to terminate the services of the petitioner. It is further contended that when it is the case of the respondent Bank that the Enquiry Officer has committed certain infirmities, as a result, the first respondent had to order for Denovo enquiry in exercise of the power conferred under Rule 69(3) of the State of Bank of India Officers' Service Rules, all the infirmities found in the enquiry report should have been made known to the petitioner, without which, the respondent Bank cannot proceed with the Denovo enquiry. Such procedural lapse committed by the respondent Bank has rightly gone into by this Court by way of passing the order in the above said writ petition with a direction to the respondent Bank to give the details on which the fresh enquiry is being ordered within a period of eight weeks, while setting aside the orders passed by the Disciplinary Authority as well as the Appellate Authority in ordering for Denovo enquiry. However, without considering such direction of this Court, the respondent Bank ought not to have

proceeded with the process of the Denovo enquiry, learned counsel contended.

5. In support of his submissions, learned counsel for the petitioner has relied upon a judgment of Hon'ble Apex Court in the case of Chairman-cum-Managing Director, Coal India Limited and others v. Ananta Saha and others ((2011) 5 SCC 142) for a proposition that once a Denovo enquiry is ordered, the effect and implications of the fresh enquiry would be to issue a fresh charge sheet. When such being the settled legal position, in the present case, though Denovo enquiry was ordered, no fresh charge memo has been issued, therefore, any proceedings initiated subsequent thereto should be set aside in view of the above said judgment.

6. In respect of non-compliance of the direction given by this Court in the above said writ petition, taking support from the judgment of this Court in the case of State of Tamil Nadu v. T.Ranganathan ((2010) 3 MLJ 625), learned counsel for the petitioner submitted that once the competent Court fixes an outer time limit to complete the enquiry and pass final orders, the parties to the proceedings are bound to strictly adhere to the time granted to comply with the said order. The party to the proceedings can approach the very same Court seeking extension of time stating sufficient reasons and once valid reasons are given, normally the Court would extend the time depending upon the facts and circumstances of the case. Thus, the Denovo enquiry ordered in this case cannot proceed further, after the time limit granted by this Court expired. Accordingly, prayed for quashing the departmental proceedings.

7. Mr.S.Ravindran, learned counsel appearing for the respondents, by filing a detailed counter affidavit, submitted that a mere perusal of the order passed by this Court in W.P.No.6388 of 2011, dated 23.07.2012, would show that the enquiry held against the petitioner was not set aside but only an opportunity was given to the petitioner and the Bank to examine the witnesses on their behalf, therefore, it cannot be construed that the disciplinary authority should order fresh enquiry only by giving reasons. Such a view, he pleaded, is unsustainable in law as there was no order setting aside the enquiry held against the petitioner.

8. It is further submitted by the learned counsel for the respondents that furnishing infirmities to the petitioner would prejudice his interest, therefore, without disclosing the nature of infirmities, enquiry officer proceeded with his enquiry and on completion of the enquiry, a report was submitted on the enquiry made by him and a copy of the report dated 25.05.2010 holding the petitioner guilty on all the charges excepting two charges was also served upon him and thereafter, he was called upon to submit his explanation on such report. Hence, he pleaded, the method adopted by the respondent Bank cannot be termed as illegal and arbitrary.

It is further stated that the petitioner vide his letter dated 27.11.2012 submitted his objections to the report of the enquiry officer expressing his full confidence on the justice to be rendered on him, thus, having chosen to submit his objections to the report of the enquiry officer without demur, the petitioner now cannot turn around and raise any such objections as alleged in the writ petition, because, he is precluded from raising any such objections belatedly.

9. In support of his submissions, learned counsel for the respondents has also relied upon a judgment of Hon'ble Apex Court in the case of Maharashtra State Seeds Corporation Limited v. Haridas and another (AIR 2006 (SC) 1480) to contend that an administrative order can be recalled and rectified and with this, he further contended that in the present case, the first respondent, after finding that there were some infirmities in the course of the enquiry, ordered for Denovo enquiry, hence, the same cannot be interfered with. With this submission, he prayed for dismissal of the writ petition.

10. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

11. It is not in dispute that the first respondent initiated disciplinary proceedings against the petitioner while he was working as Manager at Ariyalur Branch alleging certain procedural lapses while granting loan. The respondent Bank had also appointed an Enquiry Officer, who, in turn, submitted his report on 25.05.2010 holding the petitioner guilty of all the charges, excepting two charges. The Disciplinary Authority, on receipt of such report, opined that there were certain infirmities in the enquiry, therefore, the said Authority ordered for Denovo enquiry. Aggrieved against such finding, the petitioner had preferred an appeal before the Appellate Authority, who, in turn, confirmed the said findings of the Disciplinary Authority.

12. Challenging the above said orders of the Disciplinary Authority as well as Appellate authority in ordering for Denovo enquiry, the petitioner had filed a Writ Petition No.6388 of 2011, whereby this Court, by order dated 23.07.2012, held thus at paragraph 6:

"6. In the case on hand, no proper reason has been given in the order passed by the first respondent giving the details of what are all the infirmities found and which compelled the first respondent to order denovo enquiry. Merely because Rule 68(3) empowers him to order denovo enquiry, the first respondent cannot without giving any material particulars just order denovo enquiry. The absence of details vitiate the orders.

Therefore, the impugned order is set aside and the matter is remanded to the first respondent so as to enable him to pass fresh orders by giving the details on which the fresh enquiry is being ordered within eight weeks from the date of the receipt of a copy of the order and proceed further according to law. ...."

Though this Court in the above said order directed the Bank to furnish the details of what are all the infirmities found and which compelled them to order Denovo enquiry, the Disciplinary Authority, instead of complying with the order passed by this Court, issued a fresh notice which is impugned herein to continue with the earlier proceeding, that too, on expiry of the outer time limit fixed by this Court as stated above. As a matter of fact, a positive direction by this Court on 23.07.2012 to furnish the details of infirmities has been given a go-bye.

13. At this juncture, it is relevant to refer to the judgment of the Hon'ble Apex Court in the case of Commissioner, Karnataka Housing Board v. C.Muddaiah ((2007) 6 SCC 97), wherein it is held thus at paragraph 31:

"31. We are of the considered opinion that once a direction is issued by a competent Court, it has to be obeyed and implemented without any reservation. If an order passed by a Court of Law is not complied with or is ignored, there will be an end of Rule of Law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the Court. In our judgment, upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of justice. The argument of the Board, therefore, has no force and must be rejected."

As per the above said dictum of the Hon'ble Apex Court, when the outer time limit was fixed by this Court in W.P.No.6388 of 2011, dated 23.07.2012, by remanding the matter back to the first respondent so as to enable him to pass fresh order by giving the details on which the fresh enquiry is being ordered within eight weeks, without complying the same, it is neither fair nor justified on the part of the respondent Bank to say some lame excuses to ignore the direction of this Court. Therefore, on this score, this writ petition is deserved to be dismissed.

14. Another contention of the learned counsel for the respondents is that any order passed by the Disciplinary Authority to go for Denovo enquiry can always be rectified as per the judgment of the Hon'ble Apex Court in Haridas's case (cited supra), therefore, the said order passed by the Authorities being administrative in nature, the same can be rectified, hence, no infirmity can be found on the same. Such contention of the respondent Bank cannot be sustained, for, it is well settled legal position that a departmental proceeding is a quasi-judicial proceeding and that Enquiry Officer performs a quasi-judicial function. The Enquiry Officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. Therefore, in such view of the matter, any order passed by the Disciplinary Authority and the Appellate Authority would entail civil consequences. Analysing this legal position, this Court, by order dated 23.07.2012, passed in W.P.No.6388 of 2011, clearly held that merely because Rule 68(3) empowers the authority to order Denovo enquiry, the first respondent therein cannot without giving any material particulars just order Denovo enquiry and the absence of the details will vitiate the order. Accordingly, by setting aside impugned order, remitted the matter back to the first respondent so as to enable him to pass fresh orders by giving the details of infirmities. However, the respondents, without complying such direction of this Court, by relying upon a judgment of the Hon'ble Apex Court in Haridas's case (cited supra) which states that only administrative order can be rectified, cannot wriggle out from complying with the said direction of this Court. Therefore, the said judgment relied upon by the learned counsel for the respondents cannot be made applicable to the case on hand.

15. Further, it is seen that the Disciplinary Authority, after perusing the report of the Enquiry Officer, found certain infirmities in the report which necessitated to order Denovo enquiry, therefore, by specifically holding so, the respondent Bank cannot say that it is only administrative in nature and the same can be rectified.

16. Thus, for the reasons stated above, the impugned order passed by the first respondent is liable to be set aside and accordingly, the same is set aside. Consequently, the writ petition stands allowed as prayed for. No Costs.

Sd/-

Asst.Registrar (CS VII )

/true copy/

Sub Asst. Registrar

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To

1.The General Manager Network-2,  
Disciplinary Authority (D.A.),  
Local Head Office, Circle Top House,  
16, College Lane, Chennai - 600 006.

2.The General Manager Network-2,  
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State Bank of India, Circle Top House,  
16, College Lane, Chennai - 600 006.

3.The Chief General Manager &  
Appellate Authority,  
State Bank of India, Circle Top House,  
16, College Lane, Chennai - 600 006.

1 cc to Mrs. Row and Reddy, Advocate, Sr. 26165

1 cc to Mr.S. Ravindran, Advocate, Sr. 26447

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