

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15-11-2017

Date of Reserving the Judgment	Date of Pronouncing the Judgment
09.11.2017	15.11.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.1839 of 2017
and
W.M.P.Nos.1831,22716 & 7642 of 2017

S.V.Sankar

..Petitioner

Vs

1.State Bank of India,
Represented by its
General Manager-cum-Disciplinary Authority,
Network 2, Circle Top House,
16, College Lane, Chennai LHO, Chennai - 600 006.

2.The Assistant General Manager,
Enquiry Officer,
State Bank of India,
Vigilance Department,
Circle Top House, 16, College Lane,
Chennai LHO, Chennai - 600 006.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus after calling for the records relating to the orders bearing Ref.No.VIG/SKV/138 dated 05.01.2017 readwith VIG/SKV/140 dated 06.01.2017 and consequential order bearing ref. no. VIG/SKV/146 dated 19.01.2017 passed by the 1st respondent disciplinary Authority and to quash the same as being illegal, arbitrary, without jurisdiction, beyond Rule 19(3) of the SBI Officers' Service Rules, contrary to the order dt.06.10.2016 in W.A.No.788 of 2016 and consequently to direct the respondents to mediate and settle the matter as between parties and to pass such other orders or directions as this Hon'ble Court may deem it fit and proper and award costs and thus render justice.

For Petitioner : Mr.N.G.R.Prasad
for M/s.Row and Reddy

For Respondents : K.Sankaran for SBI

O R D E R

The writ petition is filed to quash the orders passed by the first respondent in proceedings dated 06.01.2017 and the consequential order dated 19.01.2017, on the ground that the orders impugned are illegal, arbitrary, without jurisdiction and beyond Rule 19(3) of the SBI Officer's Service Rules and contrary to the order dated 06.10.2016 passed in W.A.No.788 of 2016. A consequential direction is sought for to direct the respondents to mediate and settle the matter as between the parties.

2.Mr.N.G.R.Prasad, learned counsel appearing on behalf of the petitioner strenuously contended that the writ petition on hand is one such case where the respondents are attempting to conduct enquiry one after another in order to harass the writ petitioner, with a motive to impose a major penalty on him, under the Rules in force. The learned counsel is of the firm view that the Judgment of the Hon'ble Division Bench passed in W.A.No.788 of 2016, dated 06.10.2016, has been violated and the grounds initially raised by the writ petitioner was that no reason had been assigned for ordering a de-novo enquiry by the respondents in proceedings dated 15th September, 2010, and thus, the respondents shall not be allowed to continue the de-novo enquiry proceedings, which is otherwise illegal.

3.This apart, the learned counsel for the petitioner urged this Court by stating that the actions of the respondents proposing to conduct de-novo enquiry amounts to conduct of second enquiry on the same set of charges and such an action is illegal and impermissible in law. Beyond this, the Hon'ble Division Bench of this Court passed the Judgment in W.A.No.788 of 2010 dated 06.10.2016, directing the respective parties to settle the matter by way of Mediation.

4.The fact regarding the retirement of the writ petitioner was considered by the Hon'ble Division Bench of this Court and on that pretext only it was observed that the lapses if any, committed by the writ petitioner unintentionally, to be condoned and the Management may take a lenient view by imposing minor penalty and put an end to the litigation. Accordingly, if both the parties are agreeable, it was directed the parties to go for Mediation and settle the issue, instead of going for a fresh

enquiry. The learned counsel for the petitioner states that the letter and spirit of the Judgment of the Hon'ble Division Bench of this Court had been absolutely neglected by the respondents and they have unilaterally taken a decision to proceed with de-novo enquiry as ordered by them in proceedings dated 15th September, 2010. Thus, the writ petitioner is constrained to move this writ petition.

5. Beyond all those illegalities committed by the respondents while undertaking the process of disciplinary proceedings, the respondents unnecessarily harassed and penalized the writ petitioner, in spite of the orders passed by this Court, both in the Writ Petition and in Writ Appeal.

6. Mr. K. Sankaran, learned counsel appearing on behalf of the respondents vehemently opposed the contentions of the learned Counsel appearing for the writ petitioner by stating that the writ petitioner is making an attempt to prolong and protract the conduct of the disciplinary proceedings by the respondents in accordance with the rules. The respondents being an employer, has got every right to initiate disciplinary proceedings against its employees. Whenever an allegation of misconduct is noticed by the employer, it is the prerogative of the employer to proceed against the employees under the Discipline and Appeal Rules. The case of the writ petitioner is not an isolated one and it is a routine action, which was mooted out by the respondents against the writ petitioner. On contemplation of certain allegations against the writ petitioner, a charge memo was issued in proceedings dated 06.10.2008. The writ petitioner submitted his explanation on 21.11.2008, by denying the charges. An enquiry was conducted and when the enquiry is in progress, the Disciplinary Authority namely the General Manager (NW-2) noticed in the report dated 25.05.2010, that there were certain infirmities in relation to evidences/witnesses, which have not been produced during the enquiry. Thus, the disciplinary authority found that production of evidences/witnesses in the domestic enquiry is a vital opportunity to be provided to the parties to the enquiry and since the enquiry report is silent about those aspects, issued an order in proceedings dated 15th September 2010, ordering for a de-novo enquiry into the charges framed against with a new Inquiry Authority (IA) and Presiding Officer (PO). In this regard, the learned counsel for the respondents submitted that, when the disciplinary authority had every reason to believe that the necessary evidences/witnesses were examined during the course of enquiry and if there was a possibility of doubt in respect of the conduct of enquiry, then a power has been provided to the disciplinary authority under Rule 68(3)(i) of the State Bank of India Officers' Services Rules 1992, for conduct of de-novo enquiry. The above said Rule states that "the Disciplinary Authority, if it is not itself the Inquiring authority, may, for reasons to be

recorded by it in writing, remit the case to the inquiring authority - whether the inquiring authority is the same or different - for fresh or further inquiry and report, and the inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of Sub Rule(2) as far as may be.

7.Rule 68 Sub Rule (2) provides the process to be adopted for the conduct of an Enquiry. Thus, the learned counsel for the respondents states that, when the disciplinary authority found that the process contemplated under sub clause (2) of Rule 68 of the Rules, has not been followed by the inquiry authority, then the disciplinary authority is empowered to invoke the powers under Rule 68 (3) (i) of the State Bank of India Officers' Services Rules 1992. Thus, there is no infirmity in passing an order of de-novo enquiry. The learned counsel for the respondents proceeded by stating that the grounds raised in the writ petition in respect of the order of de-novo enquiry dated 15th September 2010, is that no reason has been assigned for ordering a de-novo Enquiry. On that ground, the earlier writ petition was filed in W.P.No.4344 of 2013 and this Court passed an order on 27.04.2016, by setting aside the proceedings of the first respondent dated 07.11.2012, and the proceedings issued by the second respondent dated 23.01.2013. Aggrieved over the said order, the respondents preferred a Writ Appeal in W.A.No.788 of 2016 and the Hon'ble Division Bench of this Court delivered the Judgment on 06.10.2016, by permitting the respondent-Bank to comply with the directions issued by the learned Single Judge and to proceed with fresh enquiry, as directed, initiate the proceedings within one month from the date of receipt of a copy of that order, and conclude the same within three months thereafter, and do the needful in accordance with law. The Hon'ble Division Bench directed that both the parties shall co-operate to conclude the proceedings.

8.That order was passed in respect of the writ petition filed by the writ petitioner in W.P.No.6388 of 2011 dated 23.07.2012, by holding that Rule 68(3) empowers the respondents to order de-novo enquiry and also directed the respondents to provide the material particulars for ordering de-novo Enquiry, to the writ petitioner and the absence of details would vitiate the orders.

9.In that regard, the learned counsel for the respondents solicited the attention of this Court to page No.99 of the typed set of papers, filed along with this writ petition, by the writ petitioner, in which the disciplinary authority passed an order on 06.01.2017, wherein the reason for ordering de-novo enquiry had been communicated to the writ petitioner. The disciplinary authority had stated that " I have thoroughly examined the Inquiry Report dated 25.05.2010 and found that all

evidences/witnesses have not been produced during the Inquiry. To obviate the possibilities of the Inquiry being vitiated due to the above, I order that a fresh Inquiry be held on the Charge Sheet No.VIG/TPH/441 dated 06.10.2008 by appointing Inquiry Authority and Presiding Officer." Further, it was stated in the very same order that the writ petitioner would be given an opportunity at the inquiry to cross-examine the witnesses presented on behalf of the Bank. This apart, the petitioner was also permitted to present the witnesses, however, on his own arrangements, at the enquiry on his behalf. It was further stated that if the petitioner desired to peruse any of the Bank Records, suitable notice to the Inquiring Authority to be provided in advance.

10.Thus, the learned counsel for the respondents is of the opinion that all the reasonable opportunities contemplated under the Rules and procedures are assured to the petitioner, while conducting the de-novo enquiry in respect of the allegations set out in the charge memo. Thus, the writ petition deserves to be rejected. The learned counsel for the respondents in support of his submissions, cited the Judgment rendered by the Hon'ble Supreme Court of India in Prestige Lights Ltd Vs. State Bank of India, [(2007) 8 SCC 449] and the paragraph 33 is extracted hereunder:

"33.It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter."

11.According to the learned counsel for the respondents, the writ petitioner has not produced all the material facts before this Court and he has suppressed the fact regarding the submission of his assurances for filing an application seeking condonation of the lapses, as per the Judgment of the Hon'ble Division Bench of this Court. The writ petitioner agreed to seek for condoning the lapses before the disciplinary authority, but no such application seeking condonation was filed by the writ petitioner. In fact, the Hon'ble Division Bench imposed a condition on the petitioner to submit an application seeking condonation of lapses. Further, the reasons stated for ordering

de-novo enquiry also, has not properly enumerated by the writ petitioner. For all these reasons, it is submitted that the Writ Petition has been filed by suppressing fact and as per the Judgment of the Hon'ble Supreme Court of India, cited supra, the writ petition is to be dismissed in-limine.

12.The learned counsel appearing on behalf of the writ petitioner while countering the arguments advanced by the learned counsel for the respondents, cited the Judgment of the Hon'ble Supreme Court of India in Commissioner, Karnataka Housing Board Vs. C.Muddaiah, [(2007) 7 SCC 689]. According to the learned counsel the directions given by this Court earlier, has not been obeyed nor implemented by the respondents. Thus, the writ petition is to be allowed and the entire charges are to be quashed.

13.Secondly, the learned counsel for the writ petitioner, cited the Judgment in M.Arumugam Vs. The Chairman, Tamil Nadu Electricity Board, [2016 (5) CTC 350], wherein the learned single Judge held that even if the interim order granted in the earlier writ petition had not been extended, unless and otherwise, the said order was vacated, modified or varied, it is deemed to be in force and the Board cannot take advantage of non-extension of the interim order passed by this Court. Relying on this, the learned counsel submitted that in the case on hand also, the earlier directions issued by the learned Single Judge as well as by the Hon'ble Division Bench have not been implemented in its letter and spirit by the respondents and on that grounds also, the writ petition deserves to be allowed. The learned counsel also cited another Judgment of the Hon'ble Division Bench of this Court in State of Tamil Nadu, rep.by its Secretary to Government, Personnel and Administrative Reforms (Q) Department, Chennai - 600 009 and another Vs. T.Ranganathan, [(2010) 3 MLJ 625], wherein the Hon'ble Division Bench held that non-compliance of the earlier directions issued by the Court in respect of the completion of the disciplinary proceedings is also a ground to quash the charge itself. In other words, in this writ petition, one month time was granted to the respondents to complete the de-novo enquiry, however, the respondents have not even initiated the proceedings and therefore, the charges are to be quashed on the ground of non-compliance of the earlier directions of this Court also.

14.This Court has anxiously considered the contentions and counter contentions raised by the respective learned counsels appearing in this case.

15.The factual matrix in nutshell to be considered by this Court at the first instance is the nature of allegations levelled against the writ petitioner. The allegations levelled against the writ petitioner is extracted hereunder:

"Charge No:1

As head of the Branch, he permitted flagrant violation of systems and procedures in computer related areas: allowed upgradation of NPA accounts to standard as on 31.03.2007.(As mentioned in statement of allegation item No.1)

Charge No.2

2.1 He sanctioned personal loans to ineligible borrowers located at Chennai, based on false representations and fictitious documents. The sanctions were deliberately not reported to controllers.

2.2 His act was in violation of Bank's instructions to keep in abeyance sanction of personal loans O' saral loans from Dec.2006.

2.3 He did not ensure proper appraisal before sanction of the above loans.

2.4 He did not ascertain the credit worthiness of borrowers/guarantors and did not scrutinize their Assets & Liabilities statements.

2.5 He did not verify the profession and worthiness of Shri Arokia Antony Robert (A/C No.30120133791), which were misreported in the application-cum-appraisal form. Shri Arokia Antony Robert is a man of very small means, working in a factory.

2.6 He did not verify the details of the IT returns before sanction as they were subsequently found out to be forged.

Charge No:3

3.1 He sanctioned Cash Credit/Term loans to a unit, based at Mayiladuthurai where our branch already exists.

3.2 He did not obtain prior permission from the controllers for considering the above proposal.

3.3 He did not submit the control return to the controllers for scrutiny, for the limit of Rs.4.00 lacs sanctioned on 27.09.2006, when the unit was a proprietary concern. The outstandings were not liquidated before disbursement of the fresh limits sanctioned to M/s.Ashwin Brick Works Pvt.Ltd.

3.4 He did not ensure proper appraisal before sanction of the facilities to the unit.

3.5 He did not verify the genuineness of the order purported to have been placed by The Southern Railway Divisional Engineer, Mayiladuthurai, which was later, found to be a forged one.

3.6 He neither obtained sufficient collateral nor ensured coverage under CGTMSE Scheme."

16.On a perusal of the nature of allegations, this Court is

of an unambiguous view that they are certainly serious, warranting full fledged enquiry. In normal parlance, if an allegation is noticed against a public servant, then it is the duty of the employer to initiate appropriate disciplinary proceedings under the Rules and conduct a full fledged enquiry, in order to cull out the truth. If the allegations are proved, then a punishment is to be inflicted and if the charges are not proved, then the employee has to be exonerated from the charges.

17. This being the very purpose and object of the Conduct Rules as well as the Discipline and Appeal Rules, the Constitutional Courts are to be cautious, while exercising the power of judicial review during the intermittent period, when the process of enquiry is in progress. In other words, intermittent interventions are not certainly preferable and the power of judicial review is permissible only on exceptional circumstances. Those exceptional circumstances are to be considered based on the particular facts and circumstances. Beyond the facts, the legal grounds if any raised, also to be considered while deciding these kind of cases.

18. The general principle in respect of entertaining a writ petition against the charge memo or any other proceedings issued during the course of enquiry, is that if any such charge memo or proceedings are issued by an authority, having no jurisdiction or if any allegation of mala fides are raised or if the same is in violation of statutory rules in force. Even in case of raising the allegation of mala fides, the authority against whom such an allegation is raised to be impleaded as a party respondent in the writ proceedings in his personal capacity. In the absence of any of these legal grounds, the Courts would not entertain a writ petition against the charge memo or against any proceedings issued by the authorities during the intermittent period of disciplinary proceedings.

19. Now, this Court has to examine whether the case on hand is one such case where such an inference is required or not. The nature of the charges are certainly serious in nature and a full fledged enquiry is certainly required to find out the truth behind the allegations levelled against the writ petitioner. Thus, this Court is of the opinion that there is no infirmity in initiating the disciplinary proceedings against the writ petitioner and there was no infirmity in continuing the enquiry proceedings by an Inquiring officer. However, when the report was submitted by the enquiry officer, the disciplinary authority had gone through the same and was of the opinion that "the report of the enquiry officer dated 25.05.2010 was infirm and the evidences/witnesses were not examined at the time of conducting the enquiry. Thus, the disciplinary authority have independently arrived a conclusion and issued orders on 15th September 2010, ordering for a de-novo enquiry."

20. At the first instance, the writ petitioner filed a writ petition in W.P.No.6388 of 2011, challenging the disciplinary proceedings and raised the ground that the disciplinary authority in proceedings dated 15th September 2010, has not stated any reasons for ordering de-novo enquiry, which is mandatory on the part of the disciplinary authority to assign reasons for ordering De-novo Enquiry. In other words, it was contended by the writ petitioner that enquiry after enquiry cannot be conducted on the basis of the same set of charges and even if the disciplinary authority found fit for ordering a de-novo Enquiry, it is necessary that the reasons to be furnished by such authorities in the proceedings passed in this regard. On that ground, this Court allowed the writ petition on 23.07.2012 and remanded the matter to the first respondent for conducting a fresh enquiry, within a period of eight weeks from the date of receipt of a copy of that order. Under those circumstances, the enquiry was conducted and the respondents issued an order on 7th November 2012, stating that the enquiry report dated 25.10.2010, has been enclosed and directed the writ petitioner to submit his explanation within seven days from the date of receipt of a copy of that letter. On receipt of the same, the writ petitioner again filed a writ petition in W.P.No.4344 of 2013 with a prayer to call for the records in relation to the orders dated 07.11.2012, issued by the 1st respondent bearing No.VIG/KE/137 in proceedings dated 23.01.2013 and bearing No.VIG/KE/171, issued by the 2nd respondent and quash the same, being illegal, arbitrary and contrary to the orders of this Hon'ble Court dated 23.07.2012 in W.P.No.6388 of 2011.

21. Again, the matter was adjudicated in that writ petition by this Court and a final order was passed by 27.04.2016, holding that the impugned order passed by the first respondent is liable to be set aside and accordingly, the same was set aside. As against the order allowing the writ petition, the respondents Bank preferred W.A.No.788 of 2016 and the final order was passed by the Hon'ble Division Bench of this Court on 06.10.2016, is as follows:

"7. When once the appellant-bank was confronted with the situation at the instance of the petitioner, and an order was passed in accordance with law, and the same has not been complied with, but, the Management sought to impose punishment on the alternative ground, we are of the view that it is totally unjust on the part of the Management in not complying with the directions, when there is no challenge to the same, and in presuming for themselves that there is an alternative course of action to conclude the enquiry and to impose punishment that could be challenged by the petitioner. In the circumstances, while dismissing

the writ appeal, we permit the bank to comply with the direction issued by the learned Single Judge much earlier and it is for the bank authorities to proceed with fresh enquiry as directed therein, within one month from the date of receipt of copy of this order, to initiate the proceedings and conclude the same within three months thereafter, to do the needful in accordance with law. Both the parties shall co-operate to conclude the proceedings.

8. In the course of discussion, it is proposed that the petitioner/delinquent is in the verge of retirement and the amount which is lent by way of sanctioning of loan, also cannot be said to be not a recoverable one, but since there are some irregularities alleged to have been committed by him, the delinquent agrees to seek for condoning of the lapses committed by him, if the management will take a lenient view by imposing a minor punishment and put an end to the litigation. Therefore, it is needless to say that the parties can go for mediation and settle the issue if both the parties are agreeable, instead of going for a fresh enquiry. No costs. The connected miscellaneous petition is closed."

22. Now, based on the orders passed by the Hon'ble Division Bench of this Court, the respondents issued an order in proceedings dated 06.07.2017. On a perusal of the order dated 06.07.2017, this Court is of the opinion that the original ground raised in the writ petition that no reason has been assigned for ordering De-novo Enquiry, has been complied with by providing the reason that the first enquiry report was submitted on 25.05.2010 and it was found by the disciplinary authorities that all evidences/witnesses have not been produced during the enquiry. Thus, to obviate the possibilities of the enquiry being vitiated due to the above, the disciplinary authority ordered for a fresh enquiry to be conducted on the charge sheet dated 06.10.2008, and appointed an Enquiry Authority and the Presenting Officer. The writ petitioner submitted a letter to the disciplinary authority on 13.01.2017, in which he has stated as hereunder:

"2. I am writing this letter in continuation of the letter dated 15.11.2016. You are aware that the Hon'ble Division Bench of Madras High Court in W.A.No.788/2016 had directed the Bank to resolve the issue amicably by method of mediation or to impose minor punishment to put an end to the litigation. The Hon'ble Division Bench only as a last resort directed you to conduct the enquiry within one month from the date of receipt of the in Writ Appeal."

23. In this regard, the respondents issued an order on 19th January 2017, stating that the petitioner should co-operate with the Bank/Enquiry authority to conclude the disciplinary proceedings as directed by the Hon'ble Division Bench of this Court within the stipulated time. Under these circumstances, once again, the writ petitioner filed the present writ petition in W.P.No.1839 of 2017 to quash the proceedings dated 05.01.2017, read with 06.01.2017 and the consequential order dated 19.01.2017. In the order dated 06.01.2017, the reason for ordering de-novo enquiry has been enumerated by the respondents. Thus, the grounds raised at the first instance by the writ petitioner has been complied with.

24. This Court has to consider the fact that furnishing of reason is certainly a ground to be considered in the writ petition and the same was considered by this Court and this Court at the first instance, set aside the order and remanded the matter back. However, this Court has to consider the very object of the disciplinary proceedings also. No disciplinary proceedings should be allowed to be vitiated merely on certain technical grounds. The very purpose and object of initiating the disciplinary proceedings is to see that a person committing certain misconducts should not be allowed to be escaped from the clutches of the disciplinary proceedings. In other words, the very object of the disciplinary proceedings are to cull out the truth in respect of the allegations set out against an employee in the matter of committing misconducts.

25. Under these circumstances, no doubt in order dated 15th September 2010, no reason has been given by the respondents, the writ petition was allowed and the matter was remitted back to the respondents for taking appropriate action. Subsequently, the reason for ordering de-novo Enquiry has been explained by the respondents in proceedings dated 06.01.2017. Thus, the grounds raised in the writ petition initially had been complied with. As far as, this Court is concerned, though the grounds raised are technical, it is necessary that the writ petitioner is to be provided with all reasonable opportunities to defend his case in accordance with Rules. It is not as if the respondents can conduct an enquiry at their whims and fancies. The adherence of the principle of natural justice, while conducting the enquiry proceedings is a vital factor to be considered by the Courts also.

26. The point to be considered is that the proceedings are not only conducted in accordance with the Rules, but, it was conducted by following the principles of natural justice. However, if those mistakes were rectified by the authorities at the first instance, then it is for the delinquent to participate in the disciplinary proceedings and prove his innocence before the inquiry authority and before disciplinary authority.

Repeated filing of writ petitions and attempting to achieve the ultimate goal of quashing the disciplinary proceedings, cannot be encouraged by this Court. When this Court is of the opinion that all the disciplinary proceedings initiated against an employee should reach its logical conclusion and it is left open to the delinquent officials to prove their innocence before the disciplinary authority. The institutional functions are to be respected and the Courts shall allow the proceedings to go on unless it is vitiated on account of certain legal grounds.

27. In the case on hand, no doubt at the first instance, the petitioner filed the writ petition for non-adherence of the principle of furnishing the reasons for ordering de-novo enquiry. However, the same has been complied with, subsequently. Thereafter, another writ petition was filed challenging the very same disciplinary proceedings and the writ petition was allowed, against which the respondents are preferred writ appeal and the Hon'ble Division Bench also considered those factors and finally suggested the parties to settle the matter amicably, by condoning the lapses committed by the writ petitioner, as agreed by the writ petitioner to submit a letter in that regard, and by taking a lenient view by imposing minor punishment and put an end to the litigations. However, the writ petitioner has not submitted any letter agreeing for condoning the lapses committed by him and the Management also has not taken any lenient view in that regard. The respective parties before the writ proceedings are attempting to adopt the Policy of blame game, by blaming each other.

28. The Court cannot go into such an attitude of the parties, more so, while dealing with the matters of disciplinary proceedings. The blame game both by the delinquent official and by the Management, is impermissible and this Court is bound by the legal principles settled in relation to the Departmental Disciplinary Proceedings. The Departmental Disciplinary Proceedings once initiated shall be allowed to reach its logical conclusion and a final order to be passed by providing opportunities to the delinquent officials.

29. In the case on hand at the instance of this Court by way of an order in earlier writ petition, an opportunity was provided to the writ petitioner. This apart, the non-compliance of the directions by this Court, agreeing one month time for the completion of the disciplinary proceedings has to be considered and this Court is of the opinion that the disciplinary proceedings were unable to be completed in view of the fact that the Hon'ble Division Bench has directed the parties to settle the matter through Mediation and the learned counsel for the

respondents also made a submission that the said procedure took long time to come to a conclusion, and the writ petitioner was not ready for Mediation. However, the petitioner also states that the Management has not conducted the Mediation in a right spirit, as ordered by the Hon'ble Division Bench. However, this Court is not inclined to consider the submissions made in that regard by the respective learned counsels appearing on behalf of the writ petitioner as well as the respondents.

30. Such repeated allegations by the respective parties cannot be taken note of, since this Court is of the view that it is a normal practice of the parties while proceeding with the mediation. Thus, the delay caused on account of non-adherence of the directions issued by this Court is certainly at the instance of both the parties and this Court is not inclined to consider the submissions raised both by the petitioner as well as by the respondents in that regard. Thus, this Court is of the view that the non compliance of the earlier directions to complete the disciplinary proceedings within one month, was certainly at the instance of both the parties and therefore, none of the parties can take advantage of the earlier time bound direction granted by this Court.

31. This apart, the writ petitioner all along contesting the issues on technical grounds and in respect of merits, this Court is of the view that it is for the disciplinary authority to continue the enquiry proceedings, conclude the same and pass final orders. The learned counsel appearing on behalf of the respondents reiterated that the disciplinary authorities are frequently and consistently restrained in that regard by the writ petitioner and in fact, the writ petitioner prevented the disciplinary authority from proceeding with the enquiry proceedings and from pass final orders in the disciplinary proceedings.

32. May that it be, now there is no point in blaming the parties in that regard. The right of the writ petitioner is also to be protected in respect of the opportunities to be provided in the disciplinary proceedings in accordance with Rules. Thus, this Court is of the firm opinion that the reasonable opportunities to be provided to the delinquent officer under the Discipline and Appeal Rules by the disciplinary authority and this Court cannot totally brush aside the contentions advanced by the learned counsel for the writ petitioner in this regard. However, all those grounds were adjudicated in earlier writ petitions and this Court has considered the contentions of the writ petitioner during the earlier round of litigation, an order was passed and in that regard, the respondents also communicated the reasons for ordering de-novo Enquiry.

33. Now, this Court is of the opinion that the reasons stated by the disciplinary authority that all evidences/witnesses have not been produced during enquiry, is certainly convincing, for ordering de-novo Enquiry in proceedings dated 06.01.2017. It is certainly vital and the basic principle of enquiry proceedings, is to produce all the evidences/witnesses during the enquiry proceedings. Thus, the reasons stated by the disciplinary authority in respect of passing of an order of denova enquiry is certainly convincing and there is no infirmity.

34. In respect of the other contentions that the Judgment of the Hon'ble Division Bench has not been complied with, it is relevant to point out that this Court passed an order in W.P.No.788 of 2016 dated 06.10.2016, and in paragraph 8 of the aforesaid order it was stated that "the delinquent agrees to seek for condoning of the lapses committed by him, if the management will take a lenient view by imposing a minor punishment and put an end to litigation." Thus, the first part of the above statement denotes that the delinquent agrees to seek for condoning of the lapses committed by him. In that regard, the learned counsel for the respondents states that no such letter agreeing to seek for condoning the lapses committed, has been submitted by the writ petitioner. Contrarily, the writ petitioner submitted a representation on 13.01.2017, stating that the Hon'ble High Court passed an order in W.P.No.788 of 2016, by remitting back the matter to the respondents to resolve the issue or to impose minor punishment to put an end to the litigation. Thus, the writ petitioner has conveniently omitted the directions of the Hon'ble Division Bench in respect of the order that "the delinquent agrees to seek for condoning all the lapses committed by him" and the writ petitioner has taken the next portion of the order and represented before the disciplinary authority that they should impose minor punishment to put an end to the litigation.

35. In view of the fact that the writ petitioner has not submitted himself based on the orders of the Hon'ble Division Bench, agreeing to seek for condoning the lapse committed by him, the writ petition deserves no consideration at the hands of this Court. This apart, the writ petitioner himself had not complied with the Judgment of the Hon'ble Division Bench in respect of submitting an application, agreeing to seek for condonation of the lapses committed by him. No doubt, this Court has to take note of the fact that agreeing the lapses is the discretion of the delinquent officials and the Courts cannot insist the delinquent officials to submit any letter agreeing to seek for condoning the lapses committed by him. The Hon'ble Division Bench unambiguously stated that the parties to the lis have to jointly work out for Mediation and put an end to the litigation. That was the very spirit of the Judgment of the Hon'ble Division Bench. The Hon'ble Division Bench of this

Court was of the opinion that both the parties should co-operate and go for Mediation and thereafter, put an end to the litigation. However, it is needless to state that Mediation is the discretion of the parties and the Courts are not competent to force the parties for Mediation. That was the observation and the opportunity provided to the parties by the Hon'ble Division Bench. When such an effort was unsuccessful, thereafter the parties can approach the Court once again by way of a fresh writ petition, then it is not open to either of the parties to take advantage of the Judgment of the Hon'ble Division Bench, in that regard.

36. Under these circumstances, this Court has to go by the spirit of paragraph No. 7 of the Judgment of the Hon'ble Division Bench in W.A.No. 788 of 2016 and the aforesaid paragraph of the Judgment is very clear that the Hon'ble Division Bench permitted the respondent-Bank to comply with the directions issued by the learned single Judge much earlier and it is for the Bank authorities to proceed with fresh enquiry as directed therein, within one month from the date of receipt of the copy of that order to initiate the proceedings and conclude the same within three months and thereafter, to do the needful in accordance with law. It was also stated that both the parties shall co-operate to conclude the proceedings. Thus, it is clear that in the event of failure on Mediation, the respondent-Bank was free to proceed with the fresh enquiry within one month and thereafter, conclude the proceedings within three months and that both the parties were directed to co-operate for concluding the proceedings.

37. However, the facts seen in this writ petition is that under the guise of mediation, delay was occurred on account of the actions of both the parties to this lis. Thus, now the writ petitioner cannot take advantage of the time limit fixed by the Court in this regard. In this view of the matter, it is for the respondents now to proceed with the enquiry proceedings as per the orders of this Court and conclude the same at the earliest possible and the writ petitioner shall also co-operate for the early disposal of the disciplinary proceedings.

38. Thus, the writ petitioner is at liberty to submit his explanation/objections in respect of the allegations set out in the memorandum of charges and also submit any other documents if necessary, before the competent authorities in this regard, in order to prove his innocence. This Court is of the view that an employer is certainly competent to initiate disciplinary proceedings, in case of receiving any complaint/information regarding any misconduct if any committed by the employees and in such circumstances, they are at liberty to frame charge memorandum against such employees. The very purpose and object of the disciplinary proceedings is to run a clean and efficient

administration. Confidence of the public in administration is a vital factor and to uphold the same, both the employer as well as the employee are responsible. However, if at all any memorandum of charges issued to an employee, he has got every right to defend the allegations by availing of the opportunities provided under the rules and in accordance with law. Thus, the prime principle in conducting the disciplinary proceedings is that the rights of all the parties to be protected and it is for the respective parties to co-operate and conclude the disciplinary proceedings in all respects in accord with the Rules/Regulations in this regard. However, it is not open to the writ petitioner to continue the litigations one way or other only with an idea to prolong and protract the disciplinary proceedings, so as to escape from the clutches of the Discipline and Appeal Rules. If any such idea of any delinquent official is established, then the Courts shall not encourage such litigations or keep such litigations pending for years together and the same will cause prejudice to the public administration.

39. In this view of the matter, no further adjudication is necessary on the grounds raised in this writ petition. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kak
To

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

2. The Assistant General Manager,
Enquiry Officer,
State Bank of India,
Vigilance Department,
Circle Top House, 16, College Lane,
Chennai LHO, Chennai - 600 006.

+1 CC to Row & Reddy, advocate sr 80831.
+1 Cc to Mr.K. Sankaran, Advocate sr 80767.

W.P.No.1839 of 2017

SP(30/11/2017)



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