

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.NOS.15804 AND 20193 OF 2017

COMMON ORDER

These two writ petitions are filed by the same petitioner, who is an employee of the 2nd respondent – Co-operative Bank.

2. Disciplinary proceedings were initiated against him alleging certain misconduct, involving discharge of his duties.

3. Through a resolution dated 25.01.2017, the Bank appointed Inquiry Officer, to conduct inquiry into the allegations against the petitioner.

4. The petitioner questioned the competency of the Bank to appoint Inquiry Officer, and filed W.P.No.12079 of 2017, questioning the notice issued by Inquiry Officer, directing him appear before him. His contention was that the Inquiry Officer cannot straight away issue notice to the petitioner, since he did not receive any information from the Disciplinary Authority of framing of charges and appointment of Inquiry Officer.

5. By order dated 10.4.2017, this court dismissed the said writ petition, leaving it open to the petitioner to report to the Disciplinary Authority and seek clarification from the said authority on the notice issued by the Inquiry Officer and conducting of inquiry by him.

6. Prior thereto, the Inquiry Officer issued notice on 27.03.2017, mentioning the charges leveled against the petitioner and the petitioner received the same.

7. After the order was passed by this court on 10.04.2017 in W.P.No.12079 of 2017, a notice was issued by the Inquiry Officer on 24.04.2017, enclosing copy of the order appointing him as Inquiry Officer by the bank and also enclosing documents in respect of the allegations leveled against the petitioner and asking him to appear before the Inquiry Officer on 3.5.2017. The petitioner received the same on 24.04.2017 itself, but did not submit any explanation.

8. In W.P.No.15804 of 2017, petitioner contends that his representations dated 5.4.2017, 11.4.2017 and 18.4.2017 were not considered by the Bank and that the inquiry notices date 27.3.2017, 6.4.2017 and 15.4.2017 issued by the Secretary to the Bank, should be set aside.

9. The counsel for the petitioner does not dispute that the Secretary to the Bank has no role in the disciplinary proceedings initiated against the petitioner, since he is neither the Investigating Officer, nor Presenting Officer, nor the Disciplinary Authority. Merely because his representations have not been considered, the petitioner cannot avoid participating in the

disciplinary inquiry and seek to stall the disciplinary proceedings on the said ground. Therefore, I do not find any merit in W.P.No.15804 of 2017 and the same is liable to be dismissed.

10. Coming to W.P.No.20193 of 2017, it is not in dispute that the Inquiry Officer had submitted report on 26.05.2017 to the Disciplinary Authority / President of the Bank, and on 07.06.2017, the Disciplinary Authority had issued a show cause notice calling for petitioner's explanation to show cause why further action of his removal from service should not be taken on the basis of the findings in the said inquiry report and asking him to file his explanation within seven days.

11. The learned counsel for the petitioner contends that the said show cause notice dated 07.06.2017 deserves to be set aside, since he was not given copy of the charges, nor documents on the basis of which the charges were framed or the order appointing the Inquiry Officer.

12. This contention of the petitioner cannot be accepted, since the petitioner had received notice dated 27.3.2017 of the Inquiry Officer mentioning the charges specifically and documents on the basis of which the charges were framed and they were furnished to the petitioner along the order of appointing Inquiry Officer, as enclosures to the notice dated 24.4.2017 of the Inquiry Officer.

13. The counsel for the petitioner would contend that the Inquiry Officer cannot inform him about the charges and that the said procedure vitiates the inquiry.

14. The counsel for the petitioner is not able to point out what prejudice the petitioner would suffer if he is informed about the charges by the Inquiry Officer and how that could be a basis to stall the disciplinary proceedings.

15. The counsel for the petitioner quoted the decision of the Supreme Court in *BRIJ BIHARI vs. BIHAR STATE FINANCIAL CORPORATION*¹ and contended that the person who is required to answer a charge should know not only the accusation, but also the testimony by which the accusation is supported and he should be given a fair chance to hear the evidence in support of the charge and to cross-examine the witnesses who prove the charge. It is also held therein that the delinquent must also be given a chance to rebut the evidence led against him and a departure from this requirement violates the principles of natural justice.

16. In the present case, the petitioner himself has desisted from participating in the inquiry, resorted to frivolous technical pleas and has disabled himself by his own conduct from effectively defending himself.

¹ 2015 Lawsuit(SC)1135

Therefore, he cannot be allowed to take advantage of his own wrong and plead violation of principles of natural justice by the Bank. Therefore, I see no merit in this writ petition as well.

17. Both the writ petitions are dismissed with costs of Rs.10,000/- (Rupees ten thousand only) to be paid by the petitioner to the 2nd respondent – Bank.

18. Miscellaneous petitions pending if any, shall stand closed.

M.S.RAMACHANDRA RAO,J

DATE:04—07—2017

AVS

