

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition No. 1661 of 2003**

Subir Ku. Lodh S/o Shri Makhan Ch. Lodh, Aged About 45 Years
Presently Posted As Agriculture Asst., State Bank of Indore, Sirgitti
Branch, Bilaspur, R/o Tikrapra, Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

1. State Bank of India, Corporate Centre, State Bank Bhavan, Madame Cama Road, Nariman Point, Mumbai, 400021.
2. Chief General Manager, Local Head Office, Bhopal Circle, Hoshangabad Road, Bhopal, Madhya Pradesh.
3. Deputy General Manager, Zonal Office, Bayran Bazar, Raipur, Chhattisgarh.
4. Assistant General Manager, Regional Business Office No.6, Nehru Chowk, Vikas Bhawan, Bilaspur, Chhattisgarh.

----Respondents

For Petitioner	:	Shri Amrito Das, Advocate
For Respondents	:	Shri Sachin Singh Rajput and Shri Sharad Mishra, Advocates.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****11/09/2018**

1. The challenge in this petition is two orders Annexure P/2 and Annexure P/3, both dated 24.12.2001. Challenge also is to the order Annexure P/1 whereby the appeal against the two punishment orders have been decided by a common order dated 06.01.2003.
2. Vide Annexure P/2, the petitioner has been inflicted with punishment of withholding of two increments with cumulative effect. In addition of his brought down by two stages, there was also a punishment of withholding of his agriculture allowance paid to him. Vide Annexure P/3, the petitioner was inflicted with punishment of stoppage of two annual increments with cumulative effect.

3. The case of the petitioner is that, the petitioner while working as Extension Officer at Gogawa Branch of erstwhile State Bank of Indore (subsequently merged to the State Bank of India) in district Khandwa is said to have committed certain irregularities in the course of discharging his duties. The petitioner was served with charge sheet on 11.07.1996 (Annexure P/8) for the charges when he was posted at Gogawa Branch which falls under district Khandwa (MP). The petitioner replied to the said charge sheet categorically denying all the charges and thereafter the respondents decided to conduct a departmental enquiry and after conclusion of enquiry, an enquiry report so far as charge sheet dated 11.07.1996 was submitted.
4. Subsequently, the petitioner on 18.12.1998 was issued with another charge sheet to which the petitioner has submitted his reply denying the charges and thereafter on the basis of the second charge sheet, departmental enquiry was conducted by the respondents. The Inquiry Officer later on submitted enquiry report. On this enquiry, a show cause notice dated 03.08.2001 was issued and on the basis of the two enquiry report, the impugned order of punishment Annexures P/2 & P/3 have been passed. These two orders were subjected to challenge by way of an appeal before the appellate authority which stood rejected by a common order dated 06.01.2003 (Annexure P/1).
5. The contention of the petitioner is that the material witnesses to prove the charges levelled against the petitioner against both the charges have not been examined before the enquiry officer. As such it cannot under any circumstances be said that the charges have been proved

before the enquiry officer. He referred to Annexure P/8 i.e. charge sheet in the first enquiry dated 11.07.1996 where the basic allegation against the petitioner is that the petitioner had in the course of granting agriculture loan to the villagers is said to have asked bribe of Rs. 450-500 from each of the applicants who had applied for the loan. The respondents referred to four of the persons who had been granted loan from the Gogawa Branch of the respondents. It was also the allegation of the respondents that the petitioner while making valuation had put his signature on the valuation report.

6. The contention of petitioner so far as first charge is concerned, is that none of the persons who had got loan from the Bank have been examined to establish whether the petitioner infact at any point of time had demanded bribe from any of these persons or whether these persons have obtained loan only after giving bribe to the petitioner. The entire allegation is based on a complaint lodged by one Onkar Yadav who was infact Block Congress Committee President and who is totally unconnected with any of the persons who have received loans. The petitioner referring to the enquiry proceedings and also the statement of Onkar Yadav submits that even Onkar Yadav in his deposition has stated that he has not got any information in respect of the allegation levelled from any of the persons who had applied for loan, but he had received this complaint from the Congress workers of the area.
7. According to the petitioner, this by itself would show that there was no direct evidence available either in the complaint lodged by the complainant or a direct evidence collected in the course of either

preliminary enquiry or in the departmental enquiry. Therefore, the said charge does not withstand and the punishment imposed thereupon deserves to be set aside.

8. The petitioner further submits that so far as second allegation of the petitioner not having authority to put signature on the valuation report is concerned, he had specifically brought a document dated 20.06.1993 which was a correspondence made by the then Branch Manager Shri AK Parsai who had authorized the petitioner to conduct valuation and it was at the instance of the said letter that valuation were undertaken. The petitioner further submits that there is no evidence to substantiate the allegation so far as the second charge is concerned as to whether the petitioner was not authorized by the Branch Manager to conduct the valuation part and in the absence of any material evidence in this regard, the said charge also stands not proved before the enquiry officer and yet there is a finding of the enquiry officer holding that the charges are proved which is nothing but a perverse finding and is liable to be interfered with by this court.
9. So far as charge sheet No.2 is concerned, which again is dated 18.12.1998. The said charge was in respect of the alleged letter which the petitioner had submitted while replying to the first charge sheet dated 11.07.1996 i.e. the document dated 20.06.1993. The allegation is that the said document dated 20.06.1993 was a fake document or a document created by the petitioner to take advantage in the departmental enquiry proceeding initiated against him.

10. According to the petitioner, the said letter was signed by the then Branch Manager AK Parsai and the petitioner himself had moved an application for calling this AK Parsai for examination to establish whether the said letter has been issued by him or not, but the enquiry officer has rejected the said request of the petitioner. There is no other material produced by the respondents during the enquiry to establish the fact that the said letter was a concocted or a fake document which could have been easily established from the evidence of the signatory in the said letter itself. Having not done so, the said charge also stands unproved.
11. The petitioner further submits that the departmental witness examined in the course of the second enquiry i.e. one DP Mahajan also had deposed in favour of the petitioner inasmuch as he has deposed before the enquiry officer of finding the signature *prima facie* to that of AK Parsai which was matched with the specimen signature of AK Parsai available with the Branch and there was no evidence further adduced by the management to disprove the aforesaid submission of DP Mahajan. Therefore the findings of the enquiry officer in this regard also becomes perverse finding and the same deserves to be set aside/quashed.
12. Learned counsel appearing for the respondents opposing the petition submits that firstly the present petition before this court itself would not be sustainable on the ground of jurisdiction for the reason that the entire transaction alleged against the petitioner had taken place while the petitioner was posted at Gogawa Branch which falls in District

Khandwa and which is presently under the territories of the State of Madhya Pradesh and therefore the writ petition ought to have been filed only in the State of Madhya Pradesh and not to the State of Chhattisgarh. Therefore, the writ petition on this ground deserves to be rejected. He tried to submit that no cause of action has taken place within the territories of the State of Chhattisgarh and therefore the High Court of Chhattisgarh does not have jurisdiction.

13. This contention of the respondents is not tenable for the reason that admittedly when the punishment orders Annexure P/2 & P/3 dated 24.12.2001 was passed, the petitioner was posted at Sirgitti Branch of the Bank at Distt. Bilaspur (CG). Appeal against the punishment orders also was decided when the petitioner was posted at Sirgitti Branch, Distt. Bilaspur (CG). Thus, the impugned punishment order as well as the appellate authority's order have been communicated to the petitioner when he was posted in the territories of the State of Chhattisgarh. Therefore, this court is of the view that some part of cause of action has arisen within the State of Chhattisgarh and as such this High Court has all the powers to entertain this petition under Article 226 of the Constitution.

14. This view of the court stands fortified from the decision of the Supreme Court in case of Bikash Bhushan Ghosh & Ors. Vs. Novartis India Pvt. Ltd. & Another, 2007(5)SCC 591 wherein in paragraphs 11 and 18 it has been held as under :

“11. It is, however, not disputed that the orders of termination were served upon the appellant at Calcutta. The orders of termination against them, were passed for not obeying the orders of transfer. The transfer of the appellants, therefore, had some nexus with the order of

their termination from services. It is, therefore, not correct to contend that the State of West Bengal was not the appropriate government.

18. Yet again appellants being workmen, their services were protected in terms of the [Industrial Disputes Act, 1947](#). If their services were protected, an order of termination was required to be communicated. Communication of an order of termination itself may give rise to a cause of action. An order of termination takes effect from the date of communication of the said order. [In State of Punjab v. Amar Singh Harika](#) [A.I.R. 1966 SC 1313], this Court held;

"(11) ... It is plain that the mere passing of an order of dismissal would not be effective unless it is published and communicated to the officer concerned. If the appointing authority passed an order of dismissal, but does not communicate it to the officer concerned, theoretically it is possible that unlike in the case of a judicial order pronounced in Court, the authority may change its mind and decide to modify its order. It may be that in some cases, the authority may feel that the ends of justice would be met by demoting the officer concerned rather than dismissing him. An order of dismissal passed by the appropriate authority and kept with itself, cannot be said to take effect unless the officer concerned knows about the said order and it is otherwise communicated to all the parties concerned. If it is held that the mere passing of the order of dismissal has the effect of terminating the services of the officer concerned, various complications may arise. If before receiving the order of dismissal, the officer has exercised his power and jurisdiction to take decisions or do acts within his authority and power, would those acts and decisions be rendered invalid after it is known that an order of dismissal had already been passed against him? Would the officer concerned be entitled to his salary for the period between the date when the order was passed and the date when it was communicated to him? These and other complications would inevitably arise if it is held that the order of dismissal takes effect as soon as it is passed, though it may be communicated to the officer concerned several days thereafter. It is true that in the present case, the respondent had been suspended during the material period; but that does not change the position that if the officer concerned is not suspended during the period of enquiry, complications of the kind already indicated would definitely arise. We are therefore, reluctant to hold that an order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned or otherwise publishing it will take effect as from the date on which the order is actually written out by the said authority; such an order can only be effective after it is communicated to the officer concerned or is otherwise published. When a public officer is removed from service, his successor would have to take charge of the said office; and except in cases where the officer concerned has already been suspended, difficulties would arise if it is held that an officer who is actually working and holding charge of his office, can be said to be effectively removed from his office by the mere passing of an order by the appropriate authority. In our opinion, therefore,

the High Court was plainly right in holding that the order of dismissal passed against the respondent on the 3rd June 1949 could not be said to have taken effect until the respondent came to know about it on the 28th May 1951."

15. The second ground raised by the respondents is that the present petition is also not acceptable for the reason that there are two impugned orders which are under challenge in a single petition inasmuch as there are two punishment orders which have been challenged in this petition.
16. The said contention of the petitioner also may not have much force as on date for the reason that the writ petition is of the year 2003 and going into this contention whether two separate writ petitions were maintainable or not after a period of 15 years from the date of filing of petition would be too hyper technical an issue to be decided. Moreover, the said contention also would not have strength for the reason that the petitioner had preferred two separate appeals before the appellate authority against two punishment orders, but the appellate authority has clubbed both the appeals and have decided the appeals by a common order dated 06.01.2003 (Annexure P/1) and on this ground also the objection stands unsustainable.
17. In addition, the respondents raises a ground of the petitioner being a workman under the provisions of the Industrial Disputes Act, and therefore, he ought to have availed the remedy under the said Act and not under the writ jurisdiction.
18. This objection of the petitioner also at this juncture after 15 years of petition pending before this High Court to be considered would again be too hyper technical an objection.

19. So far as merits of the case is concerned, the respondents were not in a position to give any satisfactory explanation as to how the charges both in respect of charge No.1 dated 11.07.1996 and charge No.2 dated 18.12.1998 has been established when the material witnesses have not been examined before the enquiry officer.
20. Perusal of records would show that admittedly the respondent management have failed to examine those four persons whose name reflected in the charge sheet who had obtained loan from the Branch and from whom it is alleged that the petitioner had sought bribe. Moreover, the entire charge sheet was based on a complaint made by Onkar Yadav. The deposition of Onkar Yadav itself clearly reflects that none of these four persons whose name reflected in the charge sheet had ever made any complaint directly to Onkar Yadav. Neither have they at any point of time made any complaint to the Bank authorities. The allegation made by Onkar Yadav was also hearsay communicated to him by some party worker.
21. In the absence of the beneficiaries or the persons from whom the petitioner is said to have sought bribe, not being examined before the enquiry officer, it cannot be said to be that the charges levelled against the petitioner to have been conclusively proved or established. The finding of the enquiry officer for this simple reason itself is not tenable and is sufficient to hold the findings to be perverse or contrary to the evidence on record. In addition, there was no material witness brought on record which again could establish that there was some materials available before the enquiry officer to substantiate this charge.

22. So far as second charge in the charge sheet dated 11.07.1996 is concerned, there again was no material witness examined to disprove the fact that the document relied upon by the petitioner dated 20.06.1993 to be a false or fake document. Neither was there any evidence adduced by the Branch which could establish the fact that the petitioner was not authorized by the then Branch Manager to make valuation. It is further established that it is only the valuation which has been done by the petitioner which was processed by the Branch Manager and loans were sanctioned. If at all if the petitioner was not authorized, the Branch Manager himself should not have processed the document before granting loan to the respective beneficiaries. The finding of the enquiry officer so far as this charge is concerned also is not sustainable.
23. As regards second charge sheet dated 18.12.1998 is concerned, here again the respondents have utterly failed to produce the signatory before the enquiry officer to establish whether any such letter was infact issued by him or not. The signatory was an officer working under the respondents. They could have easily brought the said person before the enquiry office. Contrary to this, the respondents have tried to draw an inference on the basis of stationery materials available in the Bank which indicates that the stationery which has been used for the said letter dated 20.06.1993 was not the stationery which was issued at the relevant point of time. This by itself cannot be accepted to be a substantial piece of evidence to establish a charge or proving a document to be a fake when the signatory of the said document has not

been examined. Even if the stationery is accepted to be of a subsequent period, but the fact is whether the said document has been issued by the Branch Manager in favour of the petitioner was required to be proved/examined in the course of inquiry, which the respondents have failed miserably.

24. For all the aforesaid reasons, the inquiry report so far as second charge sheet is concerned, also is liable to be held to be perverse finding and contrary to evidence and it can also be held to be a finding without any evidence.
25. Thus, the charges levelled against the petitioner in two charge sheet does not seem to have been properly proved or established conclusively before the enquiry officer and the finding being perverse therefore the impugned punishment orders and rejection of the appeal based on the perverse finding as given in the enquiry report would also not be sustainable. The same deserves to be and is accordingly set aside/quashed with consequence to follow.
26. The writ petition accordingly stands allowed.

Sd/-
(P. Sam Koshy)
Judge