

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.6.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.A.No.1383 of 2018and
C.M.P.No.10936 of 2018

S.Soundirarajan

..Appellant

Versus

- 1 Indian Overseas Bank
Rep. by its Chief Executive Officer/
Managing Director
Central Office 763 Anna Salai
Chennai-600 002.
 - 2 The Chief Manager/
Disciplinary Authority/CDA Cell
Indian Overseas Bank
Central Office 763 Anna Salai
Chennai-600 002.
- ...Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 6.6.2018 passed in W.P.No.13573 of 2018 on the file of this court.

W.P.No.13573 of 2018:

praying to issue a Writ of Certiorarified Mandamus To call for the records relating to the impugned letter bearing DO:DA: CM(NS): VIG:File-8346 : 2018-19 dated 31.05.2018 issued by the 2nd respondent and to quash the same and consequently direct the 2nd respondent to conduct de novo enquiry in respect of charge sheet issued to the petitioner dated 26.11.2013 after affording opportunity to the petitioner.

For appellant : Mr.K.Venkatraman Senior Counsel
for Mr.K.M.Ramesh
For R2 : Mr.N.G.R.Prasad

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned Senior Counsel for the appellant and Mr.N.G.R.Prasad, learned counsel, who takes notice on behalf of the second respondent.

2. Challenging the order passed by the learned Single Judge dismissing the writ petition and thereby declining to interfere with the show cause notice issued by the disciplinary authority, the present writ appeal has been filed by the writ petitioner.

3. It appears that the appellant, an employee of the respondent-Bank having joined the post of Clerk in the year 1983 was initiated with disciplinary proceedings in the year 2013 consequent to an FIR registered by the CBI under Section 420 IPC. The grievance of the appellant is that the enquiry officer and the disciplinary authority happen to be one and the same person, who, has even after his superannuation, proceeded with the enquiry and submitted his report and a show cause notice issued based on such a finding is vitiated.

4. It is relevant to note that even in the decision relied upon by the learned counsel appearing for the appellant viz., *CENTRAL BANK OF INDIA v. C. BERNARD* ((1991) 1 SCC 319, in para 5, the Apex Court has appreciated the stand taken by the Bank therein to the effect that an Enquiry Officer need not be an officer of the Bank and even a third party can be appointed as an Enquiry Officer to enquire into the conduct of an employee in the light of the decision in *SARAN MOTORS (P) LTD. v. VISHWANATH* ((1964) 2 LLJ 139). However, the Apex Court has also clarified that there can be no doubt that a non-official cannot act as a Disciplinary Authority and pass order of punishment against the delinquent employee. The case on hand is only at the stage of second show cause notice, or in other words, though the ex-official, who happened to play a dual role of enquiry officer and also disciplinary authority, had continued the enquiry and submitted his report, a newly appointed disciplinary authority is now available to proceed subsequently.

5. The main challenge made by the appellant is that it is not proper on the part of the Department without there being intimation to the appellant about the superannuation of the enquiry officer and as such, it affects the case of the appellant. Whether this would constitute any illegality and thereby it requires to be reviewed by holding a de novo enquiry is the question revolving around the issue. In this regard, the ratio laid down by the Apex Court as cited by the learned counsel itself depicts the fact that when the enquiry officer continues with the enquiry after his superannuation, it would not in any way vitiate the proceedings and moreover, it is not found as an irregularity much less illegality. What is emphasised is that an ex-employee cannot pass any orders imposing any punishment. The fact remains that on the finding rendered by the enquiry officer, a newly appointed disciplinary authority is now available to proceed with.

6. The present situation, in our view, would not be prejudicial to the appellant nor in violation of the principles of natural justice,

rather, it would be beneficial and more helpful to the delinquent as there is a probability that the decision that could be taken by the newly appointed disciplinary authority would be independent of the view taken by the enquiry officer. Therefore, it is for the appellant petitioner to appear before the disciplinary authority and if he has got any grievance or any defects to be pointed out, he can very well do the same and thereafter, if he is still aggrieved and is of the opinion that legal grounds are available, it is open to him to approach the appropriate authority in accordance with law. The writ appeal is disposed of accordingly. No costs. The connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

ssk.

To:

- 1 Indian Overseas Bank
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Central Office 763 Anna Salai
Chennai-600 002.

+1 CC to Mr.K.M. Ramesh, Advocate sr 41996.

+1 CC to Mr.N.G.R. Prasad, Advocate sr 42034.

W.A.No.1383 of 2018

NRI (CO)
SP(10/08/2018)

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