

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.P.No.39654 of 2004

----

N.Jayaraman

..Petitioner

Vs

1. State Bank of India  
Rep. by its Deputy General Manager  
Zonal Office, Kurinji Complex  
State Bank Road, Coimatore 641 018

2. Assistant General Manager  
State Bank of India  
Kurinji Complex  
State Bank Road  
Coimbatore 641 018.

..Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records from the respondents, quash the order of the 1st respondent bearing DIS/CON No.409 dated 29.12.2000 and the order of the 2nd respondent bearing DIS/CON No.064 dated 31.07.1999.

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.S.Ravindran, Senior Counsel

Mr.S.Bazeer Ahamed for R1

No appearance for R2.

ORDER

The Petitioner joined the services of the respondent bank on 04.06.1986 as a Messenger and while working as Messenger in Mookandapalli Branch of the respondent Bank, during the year 1993, he was issued with two charge memos and the petitioner also gave explanation for same. After that, enquiry officer was appointed. After domestic enquiry, the enquiry officer by his report dated 03.06.1998, held that none of the charges levelled against the petitioner were proved, except a minor charge of issuing the cheque and depositing the funds just before the cheque came for clearing alone was held to be proved. The findings of the enquiry officer was furnished to the petitioner by the 2<sup>nd</sup> respondent and asked for further representation by

letter dated 24.11.1998. Thereafter, according to the petitioner, without putting notice on him, the 2<sup>nd</sup> respondent by his order dated 04.02.1999, held all the charges in both charge memos were proved and show caused as to why appropriate punishment should not be imposed. The petitioner also submitted his further representation on 30.03.1999. The 2<sup>nd</sup> respondent by proceedings dated 17.04.1999 proposed a punishment of dismissal from service. However, by further proceedings dated 23.07.1999 proposed the punishment of bringing down to lower stage in the scale of pay by two stages and the punishment was imposed by the 2<sup>nd</sup> respondent by order dated 31.07.1999. The petitioner preferred appeal to the 1<sup>st</sup> respondent and that was rejected by order dated 29.12.2000. The petitioner submits that he gave representation to the respondent bank stating that the punishment imposed was in gross illegality and since the respondent bank not responded to his representation, he has filed the present writ petition.

2. The learned counsel for the petitioner would submit that though the enquiry officer found that all the charges found in both charge memos were found not proved except one minor charge that the petitioner issued cheque without any funds and just before prior to clearance, he has deposited the money, in this case, the disciplinary authority had taken the dissenting view and differed his views with the findings of the enquiry officer. In such case, sending the dissent report and calling for explanation from the petitioner is required. However, the 1<sup>st</sup> respondent simply sent the enquiry report and thereafter, getting further representation, sent show cause notice asking why punishment should not be imposed. Therefore, it is in violation of principles of natural justice and the petitioner has not committed any misconduct and the punishment imposed on the petitioner is shockingly disproportionate. Therefore, the order impugned is liable to be set aside. Further, the petitioner filed appeal, revision and mercy petitions but the authorities have not considered his representation and passed non-speaking order simply endorsed the view of the disciplinary authority, which requires interference of this court.

3. The learned counsel for the respondents would submit that the petitioner was issued with two charge memos dated 09.06.1995 in respect of various misconducts committed by him. The 1<sup>st</sup> charge memo is that, while he was working as Messenger Mookandapalli Branch, acted in collusion with the proprietor of M/s.Balaji & Co., and M/s.Sri Vinayaka Industries, stealthily removed the instruments negotiated on their behalf so as to ensure that they do not reach the drawee branches of banks and get debited to their account. In short, the charge is that the petitioner has abetted in the alleged attempts at kite-flying

thereby helped the parties to delay the payment. The 2<sup>nd</sup> charge memo dated 09.06.1995 consisted of 4 charges with regard to manipulations carried out by the petitioner in respect of savings bank account of his wife Pushpa, issuing cheques to third parties without sufficient funds in his account, indulging in business interest with third parties, misappropriation of Rs.20/- belonging to customer and non-accounting of Rs.350/- to the credit of SB account of customer B.Amrish. Domestic enquiry was conducted into the above charges. The enquiry officer submitted his report dated 03.06.1998 holding that except the charge relating to misconduct of issuing cheque to third parties without sufficient fund in the account of the petitioner, other charges were not proved. The first respondent, viz., the disciplinary authority by communication dated 04.02.1999 informed the petitioner that he was disagreeing with the findings of the enquiry officer in terms of the annexure for valid reasons. The petitioner was required to submit his explanation as to why appropriate punishment should not be imposed on him. The petitioner submitted his reply dated 30.03.1999 contending that he was not guilty of the charges levelled against him. No prejudice was pleaded by him in this regard. The first respondent by letter dated 17.04.1999 rejected the representation of the petitioner and proposed the punishment of dismissal from service by affording an opportunity to him by way of personal hearing. The petitioner attended the personal hearing and made his submissions. Thereafter, by order dated 31.07.1999, punishment of "bringing down to lower stage in the scale of pay by two stages" was imposed. The petitioner's appeal was also rejected on 29.12.2000 by the 1<sup>st</sup> respondent. Thereafter nothing was heard from the petitioner and the above said order was implemented.

4. The learned counsel for the petitioner would contend that after a period of 4 years, presumably on legal advice, the petitioner sent a letter dated 30.09.2004 pleading that the punishment imposed on him should be cancelled. This letter was sent solely with a view to get a negative reply from the respondent and thereafter file a writ petition to overcome the delay and laches. The respondent rejected petitioner's reply on 01.04.2004 and immediately thereafter, the petitioner filed the present writ petition. It is further submitted that since the order was already passed on 31.07.1999 by the second respondent and confirmed by the 1<sup>st</sup> respondent on 29.12.2000, it was implemented. After nearly four years, the petitioner sent a letter dated 30.09.2004 pleading to quash the punishment in order to overcome delay and laches after passing of 4 years. The writ petition filed by the petitioner for the order passed on 29.12.2000 shows the acquiescence of the petitioner and this is only to revive the stale pleadings. The petition is liable to be dismissed on the ground of delay and laches. The 1<sup>st</sup> respondent

placed reliance on the decision of the Honourable Supreme Court of India reported in 2019 15 SCC 633 [Union of India (UOI) and Others Vs. C.Girija and others] . The learned counsel also submitted that subsequently, disciplinary proceedings was initiated against the petitioner for other charges and that was proved. Therefore, the petitioner was awarded the punishment of compulsory retirement from service by order dated 11.04.2018. The learned counsel for the 2<sup>nd</sup> respondent placed reliance on the above cited judgment to subscribe his view that stale approach of the petitioner does not survive for consideration on the ground of delay and laches. Therefore, the writ petition is liable to be dismissed.

5. Heard and Perused.

6. Admittedly, the petitioner while serving as Messenger, two charge memos were issued on him based on certain allegations. Subsequently, after calling for explanation from the petitioner, enquiry officer was appointed and the domestic enquiry finding is to the effect that except one minor charge, all other charges are not proved. The Enquiry Officer filed enquiry report before the disciplinary authority. After considering the entire enquiry report, the disciplinary authority found all the charges levelled against the petitioner were proved. After sending dissent note, the authority proposed the punishment of dismissal from service. The petitioner, after receiving the said dissent view, made a further representation. The representation was considered by the 2<sup>nd</sup> respondent but the same has been rejected by the disciplinary authority and passed the punishment order bringing down to lower stage in the scale of pay by 2 stages. The petitioner thereafter filed, appeal, revision and mercy petitions which were all dismissed. Thereafter, the petitioner filed the present writ petition.

7. A careful perusal of the records would go to show that two charge memos were served on the petitioner and he participated in the enquiry and also the enquiry officer though found except one charge, other charges were not proved, the disciplinary authority differed with the findings of the enquiry officer and after serving the dissenting report, proposed punishment was shown caused to the petitioner, for which the petitioner also submitted his further representation which was considered and ultimately the same was rejected and punishment was imposed. However, the learned counsel for the petitioner submitted that along with enquiry report, dissenting report of the 2<sup>nd</sup> respondent was not enclosed for his perusal and he was not called for further representation which is against the mandatory requirements and thereby violated principles of natural justice.

8. On a perusal of the records, it is apparent that though dissent report was not furnished to the petitioner along with proposed punishment, enquiry report was furnished to the petitioner and sought for his further representation and the petitioner also given his further representation and that was considered and rejected. Subsequently, punishment was awarded by the 2<sup>nd</sup> respondent on 31.07.1999 and the same was confirmed by the 1<sup>st</sup> respondent on 29.12.2000. However, thereafter, the petitioner has not challenged the same. After implementation of the punishment, after four years, the petitioner has come forward with the present writ petition.

9. The learned counsel for the 1<sup>st</sup> respondent would submit that even thereafter, in terms of charge memo dated 26.07.2017 on certain allegations and for the proved misconduct, he was awarded with the punishment of compulsory retirement from service with superannuation benefits. As held by this court in the judgment referred to above, on the ground of delay and laches, the petitioner is not entitled to the relief as prayed for in this writ petition. The relevant portion of the judgment is as under:-

" 16. On the preposition as noticed above, it is clear that the claim of the applicant for inclusion of her name in the panel, which was issued on 09.01.2001 and for the first time was raked up by her, by filing representation on 25.09.2007, i.e., after more than 06 and half years. The claim of inclusion in the panel had become stale by that time and filing of representation will not give any fresh cause of action. Thus, mere fact that representation was replied by Railways on 27.12.2007, a stale claim shall not become a live claim. Both Tribunal and High Court did not advert to this important aspect of the matter. It is further to be noted from the material on record that after declaration of panel on 09.01.2001, there were further selection under 30% promotion by LDCE quota, in which the applicant participated. In selection held in 2005 she participated and was declared unsuccessful. With regard to her non-inclusion in panel in 2005 selection, she also filed O.A. No. 629 of 2006 before the Tribunal, which was dismissed. After participating in subsequent selections under 30% quota and being declared unsuccessful, by mere filing representation on 27.09.2007 with regard to selection made in 2001, the delay and laches shall not be wiped out."

10. In the present case on hand, the enquiry officer filed the report on 03.06.1998, however, the disciplinary authority differed with the findings of the enquiry officer and sent a communication dated 04.02.1999 and thereafter, charges levelled against the petitioner in both the charge memos are proved. The petitioner also gave a further representation on 30.03.1999. The 2<sup>nd</sup> respondent also vide communication dated 17.04.1999 proposed the punishment of dismissal from service. Thereafter, by further order dated 31.07.1999 punishment of bringing down to lower stage in the scale of pay by two stages was awarded. Thereafter, the petitioner's appeal was also rejected on 29.12.2000. After four years, the petitioner sent a letter on 30.09.2004 pleading to revise the punishment and when the same was rejected by reply dated 01.04.2004, the petitioner filed this writ petition seeking to quash the order of punishment. In such circumstances, the decision reported in 2019 (15) SCC 633 relied on by the learned counsel for the respondents is squarely applicable to the facts of the present case and accordingly, on the ground of delay and laches, the writ petition is liable to be dismissed. Accordingly, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

nvsri

Sub Assistant Registrar

To

1. Deputy General Manager, State Bank of India  
Zonal Office, Kurinji Complex  
State Bank Road, Coimbatore 641 018
2. Assistant General Manager  
State Bank of India  
Kurinji Complex  
State Bank Road, Coimbatore 641 018.

W.P.No.39654 of 2004

sr-ii(CO)  
rv(22/01/2021)

WEB COPY