

UMESH
SHRINIWAS
MALANI

Digitally signed
by UMESH
SHRINIWAS
MALANI
Date: 2021.11.15
20:46:27 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 625 OF 2021

Sachin Kumar

...Petitioner

Versus

The Disciplinary Authority, Solapur Zone,
Zonal Office and Anr.

...Respondents

Mr. Kishor Patil i/by Dipak Mane for the Petitioner.
Ms. M.S. Bane, AGP, for the Respondent – State.

CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.

DATE : NOVEMBER 15, 2021.

PER COURT :

1. Heard learned Counsel for the Petitioner.
2. This Petition raises a challenge to the orders passed by the Disciplinary Authority as well as Appellate Authority of Respondent No. 3 i.e. Bank of India. It may not be necessary for us to refer to the facts in detail, suffice it to say that, the Petitioner was an employee of Respondent No. 3 – Bank of India and was discharging his duties as a Branch Manager in Solapur Branch for certain period and subsequently, he was transferred to Osmanabad Branch. The Petitioner was subjected to the order of penalty dated 15th

January, 2019 in the form of dismissal. The copy of the same is placed on record at Exhibit 'E'. The perusal of the order show that the Petitioner was charged for committing acts of misconduct in regulation of Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976 (for short 'Regulations of 1976').

3. Being aggrieved by the said order, an appeal was preferred before the Appellate Authority and the Appellate Authority could not find favour in the matter of Petitioner and ultimately vide order dated 31st July, 2019 the Appeal preferred by the Petitioner was dismissed by confirming the Disciplinary Authorities order dated 15th January, 2019.

4. Certain grounds raised in the present Petition and there is challenge to the orders of the Disciplinary Authority as well as the Appellate Authority including the ground that the relevant and necessary material was not supplied to the Petitioner.

5. Then the Petition was posted before this Court on various occasions. Perusal of the order-sheet shows that initially the Petitioner failed to add the necessary Respondent i.e. Bank of India as party Respondent to the Petition and then vide order of this Court dated July 16, 2021, the Petitioner was permitted to amend the Petition so as to join Bank of India as party

Respondent No. 3 to the Petition.

6. On 29th July, 2021, again the matter was posted before this Court. It was submitted before this Court by the learned Counsel appearing for the Petitioners that copy of the Petition is already forwarded to the Respondents. It seems that the Petitioner was permitted to serve the Respondents by way of the legally permissible mode of service including the postal service on the Respondents and affidavit is filed in this Court submitting therein that all the Respondents were duly served. The receipts of speed post and track record of postal service were annexed to the service affidavit.

7. In view of this facts, it can safely be said that, the Respondents are though duly served they have chosen not to appear before this Court either personally or by engaging Counsel of their choice.

8. Learned Counsel for the Petitioner submitted that during the pendency of the Petition he had gone through the Regulations of 1976 and it revealed that the authority can exercise the powers of review under Regulation No. 18.

9. Perusal of this Regulations 1976 show that Regulation No. 17 deals with the Appeals being preferred by the officers or employee and Regulation No. 18 deals with the Review. It may not be out of place to refer to

the relevant part Regulation No. 18 and same reads thus:

18. *Review:*

Notwithstanding anything contained in these Regulations, the Reviewing Authority may call for the record of the case within six months from the date of the final order either on his own motion or otherwise review the said order, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come or has been brought to his notice and pass such orders thereon as it may deem fit;

Provided that-

(i) If any enhanced penalty, which the Reviewing Authority propose to impose, is a major penalty specified in clauses (f), (g), (h), (i) or (j) or Regulation 4 and an enquiry as provided under Regulation 6 has not already been held in the case, the Reviewing Authority shall direct that such an enquiry be held in accordance with the provisions of Regulation 6 and thereafter consider the record of the enquiry and pass such order as it may deem proper:

(ii) If the Reviewing Authority decides to enhance the punishment but an inquiry has already been held in accordance with the provision of Regulation 6, the Reviewing Authority shall give show cause notice to the officer employee as to why the enhanced penalty should not be imposed upon him and shall an order after taking into account the representation, if any, submitted by the officer employee.

10. Learned Counsel then submitted that the Petitioner would like to avail the remedy by approaching the authority to exercise the powers of review for redressal of his grievance.

11. Learned Counsel for the Petitioner was also fair in submitting before this Court that the Regulation No. 18 refers to a stipulation of period i.e. of 6 months from the date of the final order. The Counsel then submitted that the Petitioner had approached this Court under a bonafide belief that there is not other remedy available to the Petitioner and the delay, if any, to approach the Reviewing Authority may be considered sympathetically.

12. Considering all the above referred facts, we are of the opinion that the Counsel for the Petitioner made out a case for permitting the Petitioner to approach the Reviewing Authority. The Counsel for Petitioner was also justified in submitting before this Court that the delay in approaching the Reviewing Authority would be only acts of bonafide belief of the Petitioner and the same shall not be treated as a technical hurdle for redressal of the grievance of the Petitioner.

13. One cannot loose sight of the fact that, the Respondents were served and in spite of having an opportunity to submit their say before this Court, they have chosen not to appear before this Court. As such, we left with no choice but to dispose of the Petition with a liberty to the Petitioner to approach the Reviewing Authority for submitting his grievance in the form of representation or petition. Learned Counsel for the Petitioner submitted that

the Petitioner would approach the Reviewing Authority within two weeks from today. The statement of the learned Counsel for the Petitioner is accepted as an undertaking to this Court.

14. In case, the Petitioner approaches the Reviewing Authority referred to in the Regulations of 1976 in general and in particular, Regulation No. 18, the Reviewing Authority to decide the representation seeking review as expeditiously as possible without raising a technical rider of delay.

15. Needless to state that this Court had not made any observations on the merits and the Reviewing Authority is at liberty to take its own decision on the merits of the proceedings i.e. the representation or petition submitted to the Reviewing Authority by the Petitioner.

16. With these directions, the Petition is disposed of.

(S.M. MODAK, J.)

(PRASANNA B. VARALE, J.)