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W.P.No.17266 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.17266 of 2017
and W.M.P.Nos.18764 of 2017, 21502 of 2019 & 27163 of 2021

Harjinder Singh

.. Petitioner

VS

1.National Bank for Agriculture and Rural Development
Rep. By its Chairman,
C-24, G Block, Bandra Kurla Complex,
Post Box No.8121,
Bandra (E), Mumbai – 400 051.

2.Chief General Manager,
NABARD, Regional Office.

3.Deputy General Manager
NABARD Regional Office
Respondents 2 & 3 at
No.48, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying to issue a writ of certiorari after calling for the records
relating to second charge sheet bearing
Ref.No.N.B.T.N.HRMD/666/PA-DISC/2016-17 dated 23.12.2016
issued by the 2nd respondent Disciplinary Authority to the
petitioner and to quash the same.



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For Petitioner : Mr.Balan Haridass
for Mr.R.R.Pradheep

For Respondents : Mr.Vijay Narayan,
Senior Counsel
for Mr.T.Poornam

ORDER

Writ petition has been filed in the nature of a certiorari seeking the records relating to the second charge sheet bearing Ref.No.N.B.T.N.HRMD/666/PA-DISC/2016-17 dated 23.12.2016 issued by the second respondent, Chief General Manager, NABARD, Regional Office at Chennai / Disciplinary Authority and quash the same.

2. The writ petitioner was appointed as Clerk Grade II by the respondent bank on 16.04.1984. He was posted to the Regional Office at Chandigarh. He was then promoted on 01.07.1994 as Assistant Manager and posted at Regional Office, Jammu. He was further promoted as Manager in May, 2003 and posted at Regional Office, Chandigarh. He was then transferred and posted at Regional Office, Chennai on 04.07.2016.



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3. During his service at Chandigarh, the petitioner was also Honorary Member of NABARD Employees Cooperative Urban Salary Earners Thrift and Credit Society Limited, Chandigarh (hereinafter referred to as 'NABARD Employees Cooperative Society'). He was also elected Member of the Managing Committee of the Society between February, 1999 and January, 2002. He acted as President of the Managing Committee from January 2002 and resigned in May 2003.

4. He had a very interesting tenure while serving in the aforesaid positions in the NABARD Employees Cooperative Society. On 25.04.2007, he was issued with a charge memo which can be called the first charge memo complaining that he had violated Rule 28 of NABARD Staff Rules, 1982. It was alleged that he had failed to promote the bank's interest and brought disrepute to the organization.

5. The said charge memo was issued under Rule 47 of the Rules. He was placed under suspension on 13.12.2005. The suspension was revoked in November, 2006. He stated that an enquiry was held in October, 2007. He was dismissed from service along with five other staff members. He then preferred an appeal



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before the appellate authority, which was dismissed in August, 2009.

6. He then filed a Civil Writ Petition / CWP No.12241 of 2015 (O&M) before the High Court of Punjab and Haryana at Chandigarh. The petition was allowed and the orders of the disciplinary authority and also of the appellate authority were set aside. It was directed that he should be reinstated into service and that arrears of salary and allowances should be paid till the date of reinstatement, however, restricting it to 38 months prior to the filing of the writ petition.

7. He then assumed duties at Regional Office, Chennai wherein, he was issued with the charge memo which is impugned in the writ petition and which could be termed as the second charge memo. It is complained by the petitioner that the charge memo is a repetition of the one which went through its process whereby he was dismissed from service till it was finally interfered with by the High Court of Punjab & Haryana.

8. It is also complained that the second charge memo was issued on the very same set of facts, which were alleged in the



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first charge-sheet. It is also stated that the respondents have no jurisdiction or authority to issue any charge memo at all either the first or the second. It was also stated that the earlier charges could not be resurrected again. It was complained that there was violation of the fundamental principle which stipulates that no person should be charged with the same offence for a second time.

9. The petitioner issued a letter complaining about the issuance of such second charge-sheet on 30.05.2017. But since there was no reply, and since the enquiry officer came to be appointed and enquiry date was also determined, the writ petition had been filed.

10. It must be stated that pending the writ petition, the learned Single Judge, who had examined the issues before, had directed that the enquiry could proceed but final orders should not be passed.

11. I am informed that the enquiry had proceeded, and had also been completed. On being so informed, the respondents were permitted to provide a copy of the enquiry report to the petitioner herein. The matter is at that stage.



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12. A counter affidavit had been filed on behalf of the respondents wherein, they had stated that the petitioner had taken recourse to filing an appeal as an alternate remedy and also parallely, he had also invoked the writ jurisdiction under Article 226 of the Constitution of India. It was also stated that the petitioner had participated in the enquiry proceedings, which had attained finality and a report had also been prepared. As stated, a copy of the report has also been furnished to the petitioner.

13. With respect to the right of the respondents to proceed against the petitioner herein questioning his acts which he had committed / acts of omission or commission, while functioning as office bearer of the NABARD Employees Cooperative Society, the respondents stated that the Society was an off shoot of the bank. The members were the employees of the bank and no third person could be a member of the society. The object of the society was to lend money to its members, who are again the respondent's employees. It was stated that, therefore, the activities of the society are intricately connected with the bank and the bank has a supervisory control over the society and has its interests to be protected if any office bearer of the society is found or is alleged to



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have misappropriated money, which is the crux of the charge against the petitioner herein along with other charges.

14. It is also complained that these acts of the petitioner and others brought disrepute to the respondents and to protect their image, they necessarily had to initiate disciplinary proceedings. It was contended that therefore, the respondents have every right to issue the charge memo against the petitioner herein and seek explanations to be given by him.

15. The other ground which had been raised by the petitioner herein was that quite apart from him, there were several others who had also been similarly issued with the charge memo and a few of them had knocked the doors of the Hon'ble Supreme Court. Reliance is placed on one of the orders of the Hon'ble Supreme Court in the case of *Arvind Singh Arora v The National Bank for Agriculture & Rural Development and others* [C.A.No.10808 of 2014 dated 05.12.2014].

16. In that case, the Hon'ble Supreme Court had examined the procedure which had been adopted during the enquiry and found that the principles of natural justice had not been adhered to



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and had taken a decision to quash the disciplinary proceedings. They set aside the order of dismissal and also the order of the appeal filed by that particular appellant. The civil appeal was allowed by the Hon'ble Supreme Court. It was held that the appellant therein would be entitled to all consequential benefits.

17. It must also be mentioned that this particular order of the Hon'ble Supreme Court was relied on by the petitioner when he filed his writ petition aforementioned, namely, CWP No. 11202 of 2010 (O&M) before the Punjab and Haryana High Court. The order of the Hon'ble Supreme Court granted relief to other employees also. These facts were taken note of by the Punjab and Haryana High Court and they also followed suit by setting aside the departmental proceedings against the petitioner and directing reinstatement with a small caveat that since the petitioner had approached the High Court a little late, giving him the benefits only for 38 months prior to the date of order and not earlier.

18. These two orders put an end to the first round of the proceedings against the petitioner. The respondents, however, justified issuing a second charge memo by stating that the Hon'ble Supreme Court and the High Court of Punjab and Haryana had not



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examined the issues on merits but had rather only examined whether appropriate procedure had been followed during the said departmental proceedings. It had therefore been stated that it was well within the right of the respondents to re-open the issue for better adjudication and to provide necessary opportunities. In effect, they claimed a right to issue a second charge memo even though it may be on the very same grounds, by stating that there was an obligation on the part of the respondents to examine whether the charges laid against the petitioner herein, stood established or not. This was also to protect their reputation. They therefore claimed that there was no procedural irregularity, as alleged by the petitioner in issuing a second charge memo.

19. It is also however contended on behalf of the petitioner herein that the officer, who actually issued the second charge memo was not competent to so issue the charge memo. In this connection, reliance was placed on the proceedings of the Chairman of the respondent, who in the first instance, had appointed, the Chief General Manager at Headquarters to issue the charge memo, but which was curtailed half way through by the orders of Hon'ble Supreme Court and Punjab and Haryana High Court.



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20. It is complained by the petitioner that in the second instance, namely, the second charge memo, which is now impugned in the present writ petition, that had been issued by the Chief General Manager, Regional Office at Chennai. Competency of the said officer to so issue the charge memo has also been seriously put to test and questioned by the petitioner. Arguments on these lines were advanced by learned counsel. It is, therefore, contended that this Court should interfere with the proceedings.

21. The respondents on the other hand contended that the Chairman had a discretion to appoint the enquiry officer and it is not necessary that it is only the Chief General Manager at Headquarters who alone should be so appointed. Reliance is placed on the word 'may' which provided some leverage for the Chairman to appoint any officer superior to that of the delinquent and in this case, therefore had appointed the Chief General Manager, Regional Office at Chennai to issue the impugned charge memo. It was also pointed out that, at the relevant point of time, the petitioner was employed at Chennai and, therefore, it would only be convenient to him to answer the charges and participate in the enquiry.



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22. Detailed arguments had been advanced by Mr.Balan Haridass, learned counsel appearing on behalf of the petitioner and Mr.Vijay Narayan, learned Senior Counsel appearing on behalf of the respondents.

23. Mr.Balan Haridass, learned counsel for the petitioner, took the Court through the sequence of events, particularly the issuance of the first charge memo, the disciplinary proceedings initiated thereunder and the complaint given by one of the members, who was similarly charge sheeted / delinquent officer, and who had finally approached the Hon'ble Supreme Court where, serious flaws were found out in the procedure adopted. It was stated that documents were produced and marked without prior notice. It was also complained that witnesses were examined, without proper notice being given in advance about the statements or the nature of the evidence to be let in. The Hon'ble Supreme Court, for all these reasons, had set aside that particular departmental proceeding.

24. It is the main contention of the learned counsel for the petitioner that no leave was granted by the Hon'ble Supreme Court



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to re-commence the disciplinary proceedings. It was contended that the Hon'ble Supreme Court had put an end to the disciplinary proceedings and, therefore, it is contended that without such leave or permission being granted, issuance of the second charge memo was violative of the rights of the petitioner herein as he stood charged for the same set of facts, a second time.

25. That the first and second charge memos were on the same line of facts, is neither denied nor disputed. They were also substantially on the same aspects. It was also contended by learned counsel for the petitioner that the second charge memo suffered from a basic flaw of being issued without any authority or without any leave being granted when the proceedings pursuant to the first charge memo had been set aside by the Hon'ble Supreme Court and also by the High Court of Punjab and Haryana, in the specific case of the petitioner herein.

26. Learned counsel for the petitioner also raised issues over the competency of the officer who had issued the second charge memo. Learned counsel pointed out that the charges proceeded on the basis that the petitioner had brought about disrepute to the bank. He questioned the authority of the



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respondents to issue such a charge memo. He contended that the cooperative society was an independent society. The bank is also an independent entity. It is therefore contended that the respondents had overreached themselves by issuing not only the first charge memo but also the second charge memo.

27. Mr.Vijay Narayan, learned Senior Counsel appearing for the respondents, however contended that any public servant or any officer of a bank or of any other organization, if he conducts misconduct outside the duties assigned to him, he could still be proceeded against for such misconduct. It is contended by learned the Senior Counsel that in this particular case, the affairs of the society had invited negative media publicity and to protect the reputation and the name of the respondents, since the petitioner had acted with conduct prejudicial to the reputation of the bank, there was a responsibility to issue a charge memo.

28. It is also contended by the learned Senior Counsel, that the employees of the bank were members of the society. The members of the society took loans from the cooperative society and it was therefore contended that it was one homogeneous group of employees / staff / officers been and those who were



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charged belonged to the same homogeneous group. Those who were victims, had suffered owing to the acts of misappropriation also belonged to the same group. They all came were employees / staff / officers of the respondent and, therefore, it was contended the respondents had a right to examine the issues of the society.

29. Learned Senior Counsel also contended that the orders of the Hon'ble Supreme Court and of the High Court of Punjab and Haryana did not find fault with the charges but found fault with the procedure adopted during the course of the enquiry and therefore without examining the issues on merits, but only on what, the learned senior counsel called, 'technical ground', had set aside the said disciplinary proceedings. It was therefore contended that the respondents had every right and in fact a duty to initiate disciplinary proceedings.

30. In this connection, learned Senior Counsel also relied on the dictum laid down by the Hon'ble Supreme Court and by the High Courts. Before proceeding further it would only be obligatory to refer to those judgments in seriatim.

30.1 The first judgment relied on was *S.Govinda Menon v*



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Union of India and another [AIR 1967 SC 1274]. In that particular case, an IAS officer was deputed to the Board of Revenue and to the HR&CE. While functioning as such, he had apparently committed acts inviting disciplinary action to be initiated against him. He was not a member of those departments. However, the respondent / Union of India to which any IAS officer has a direct employee-employer relationship had thought it fit to issue proceedings against the said officer. Questioning locus, the writ petition has been filed. Finally it went up to the Hon'ble Supreme Court. The Hon'ble Supreme Court while examining that particular issue had used a very significant phrase. They had stated that since he was '*a servant of the Government*', the respondents have every right to initiate disciplinary proceedings. It was stated that if the acts of omission reflected on the reputation of the officer or his integrity or good faith, even though there could be no direct master-servant relationship, still the respondents had a right to initiate disciplinary proceedings. I must however point out that on a very slight narrow ground, the facts in this particular case are distinguishable.

30.1.1 Here, the Society is an independent organisation as such. It is governed by the Punjab Cooperative Societies Act.



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That is a self-contained Act. If any acts of misconduct or misappropriation are conducted, the Act comes into play and, according, to those provisions, necessary action can be initiated. To that extent, though the dictum laid down by the Hon'ble Supreme Court is binding, the facts are distinguishable.

30.2 The second judgment relied on was *Union Bank of India, Mumbai v K.K.Salin* [(2001) 4 LLN 226 Bombay]. The facts in that case are also quite interesting. An employee of a Nationalized Bank, namely Union Bank of India, went about promising his co-employees that he would start a cooperative society and collected funds for such cooperative society. It was stated that after collecting such funds, he was not be able to refund the amounts to the members when demanded. He actually did not have money in the bank. He issued cheques, which were returned dishonoured. Thereafter, it was found that the employee in that particular case, the respondent before the Bombay High Court had conducted an independent trade or business and that was violative of the Rules guiding this employment. It was held in that particular case, that the employer would have jurisdiction to initiate the disciplinary proceedings. It was stated that the foundation of misconduct which was committed bore sufficient nexus with the business or activity



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of the employer.

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30.2.1 There was a reference in the particular judgment of the Bombay High Court to an earlier judgment of the Division Bench, namely, *Nandita B.Palekar v Y.S. Kasbekar and others* [1985 II LLJ 336 Bom]. In that particular case, disciplinary proceedings were sought to be initiated against a Senior Clerk of the Maharashtra Housing Board to whom a tenement had been allotted. One of the conditions was that he should not sublet the premises without consent of the Board. It was found that the tenement was allotted not in his capacity as an employee of the Board. The Division Bench in that particular case had held that consequences which were prescribed by the Housing Board for cancellation of allotment and eviction would apply but the bank could not proceed further with disciplinary proceedings.

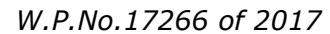
30.2.2 In the instant case, the petitioner herein did not create a cooperative society. The society was already in existence. He was an office bearer of the society. It is alleged that he had committed acts of misappropriation. The veracity of that allegation is beyond the scope of this Court to verify. But it must also be pointed out that, that particular society was governed by a



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separate legislation which had its own provisions for proceeding in a case of misconduct or misappropriation. Therefore, on facts, this particular judgment would also be distinguishable so far as the facts of the case is concerned.

30.3 The third judgment, which was pointed out by learned Senior Counsel, was on very similar facts to that of the present writ petition is concerned i.e., *Burdwan Central Cooperative Bank Limited and another v Asim Chatterjee and others* [(2012) 2 SCC 641]. The respondent in that particular case was originally employed in what was called a Samity. Thereafter, he joined the services of the appellant bank. After he joined the services of the appellant bank, certain acts inviting disciplinary proceedings came to be initiated when he was functioning as an employee of the Samity. Therefore, when he was an employee of the bank, a charge-sheet was issued and disciplinary proceedings stood initiated. The Hon'ble Supreme Court stated that disciplinary proceedings stood vitiated. They set aside the view taken by learned Single Judge and by the Division Bench of the High Court and stated that allegations of defalcation made against the respondent therein when he was previously employed under the Samity, could be proceeded against the appellant bank. They had



The reasons of the Hon'ble Suprme Court are set out below:-

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$$X \quad X \quad X$$



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21. This is, in fact, a case where the order of punishment had been passed against the Respondent No. 1 on allegations of financial irregularity. Such an allegation would require serious consideration as to whether the services of an employee against whom such allegations have been raised should be retained in the service of the Bank. Since a Bank acts in a fiduciary capacity in regard to people's investments, the very legitimacy of the banking system depends on the complete integrity of its employees. As indicated hereinbefore, there is a live-link between the Respondent No. 1's performance as an employee of the Samity, which was affiliated to the Bank, and if the Bank was of the view that his services could not be retained on account of his previous misdemeanor, it is then that the second part of B. Karunakar's case (*supra*) becomes attracted and it becomes necessary for the court to examine whether any prejudice has been caused to the employee or not before punishment is awarded to him.

X X X

23. In the above circumstances, we cannot agree with the view taken by the learned Single Judge, as affirmed by the Division Bench of the High Court, that the Appellant- Bank had no jurisdiction to proceed against the Respondent No. 1 by way of disciplinary proceedings in regard to the allegations of defalcation made against him while he was employed under the Co-operative Samity which was an affiliate of the Appellant-Bank. The other decision cited by Mr. Ray in S. Govinda Menon's case (*supra*) also makes it abundantly clear that even though the Respondent No. 1 may not have been under the direct administrative control of the Bank at the relevant point of time when the defalcation is alleged to have taken place, on account of the affiliation of the Samity with the Bank under the provisions of the West Bengal Cooperative Societies Rules, 1987, the Appellant-Bank had



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jurisdiction over the Respondent No. 1 after he joined the employment of the Appellant-Bank. In the instant case, since the question of integrity in managing the accounts of the Samity is in question, it was but natural for the Bank to proceed departmentally against the Respondent No. 1 after coming to learn of the allegations which have been made against him."

30.3.1 The reasoning of the Hon'ble Supreme Court was that banks act in fiduciary capacity with respect to investments by the public. If there is misappropriation by any employee it would directly affect the very legitimacy of the banking system and impinge on its own integrity. These words drive home the point that even if the petitioner herein had committed acts of misappropriation in a separate society, still since the society was also involved with extending loans to its members, and when integrity of that particular person is called into question, it is the reputation of the respondents which is finally affected, since the integrity of their own officer is being questioned. The confidence which the general public had while entrusting their finances with the respondent would be deroded to that limited extent.

30.3.2 This judgment provides a bridge between the respondent on the one hand and the acts of the petitioner on the other hand and is more directly applicable to the facts of the case.



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30.4 There was also reference to *Superintendent (Tech.I) Central Excise, I.D.D.Jabalpur and others v Pratap Rai* (1978) 3 SCC 133. The facts in that case are singularly different wherein, an earlier order was passed '*without prejudice*' setting aside the proceedings of adjudication. A second adjudication was initiated. It was justified on the ground that the earlier order had been passed '*without prejudice*'. Those facts, cannot be applied to the facts this case.

30.5 The next judgment is that of the Division Bench of this Court in *Sattar Sahib v State of Madras* [1952 (65) LW 414]. Again, this case does not advance the case of the respondents because after the earlier proceedings had been quashed, a careful reading of the judgment shows that it was directed that the Tribunal can take up the application and re-hear the same. This would mean that the earlier charges would lie and fresh charges cannot be framed. The specific phrase which was used was '*re-hear the same*'.

30.6 The next judgment which was relied on was the judgment of the Andhra Pradesh High Court in the case of



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Thimmasamudram Tobacco Co., vs Assistant Collector of Central Excise, Nellore Dn, Nellore [AIR 1961 AP 324]. There again, it had been stated that if the earlier proceedings had been set aside on the grounds of violation of principles of natural justice, then the procedure can be started once again. This judgment was relied on to justify the initiation of fresh charges on the second occasion against the petitioner herein. But there again, reliance was made to *Sattar Sahib* (supra), wherein the Division Bench of the Madras High Court had very categorically stated that the Tribunal should *re-hear the same*.

31. The respondents also relied on the judgment of the Hon'ble Supreme Court in *Anand Narain Shukla v State of Madhya Pradesh* [(1980) 1 SCC 252]. This judgment again would not come to the rescue of the respondents since, therein, after the appellant had been reinstated he was placed under suspension, fresh proceedings were started on the basis of the '*same old charges*'. It is thus seen that though the earlier order was quashed on technical grounds, the same old charges had been proceeded against. Thereafter, the Hon'ble Supreme Court had stated as follows:-

"We find no substance in either of the points urged on behalf of the appellant. The earlier order was quashed on the technical ground. On merits, a second enquiry could be held. It was



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rightly held. The order of reinstatement does not bring about any distinction, in that, regard. The Government had to pass that order because the earlier order of reversion had been quashed by the High Court. Without reinstating the appellant, it would have been difficult perhaps unlawful, to start a fresh enquiry against the appellant. The observations of this Court in the last paragraph of the judgment in State of Assam and Anr. v. 7. N. Roy Biswas MANU/SC/0476/1975 : (1976) IILL J17SC are not applicable to the facts of the present case and do not help the appellant at all."

31.1 Without reinstating the appellant it would have been difficult, perhaps, unlawful to start a fresh enquiry against the appellant. In other words, the Hon'ble Supreme Court had also observed that starting of fresh enquiry would in their words be 'unlawful'.

32. Learned Senior Counsel appearing on behalf of the respondents also placed reliance on *Vipulbhai Mansinghbhai Chaudhary v State of Gujarat and another* [(2017) 13 SCC 1]. In that case, a show-cause notice was first issued. The show-cause notice was quashed. A second show-cause notice was issued. It must be pointed out that there is ample difference between a show-cause notice and a charge memo. A show cause notice is a notice issued calling upon the delinquent to show cause or give necessary explanation as to why further proceedings need not be



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initiated against him. Opportunity is inbuilt in the show-cause notice itself. A charge memo on the other hand is initiation of disciplinary proceedings and a further serious step taken by the employer against the employee. Two separate show-cause notices being issued cannot be equated with a first proceedings being set aside and the second charge memo being issued. Therefore, this judgment again is distinguishable on facts.

33. Learned Senior Counsel on behalf of the respondents also relied on the judgment of a learned Single Judge of this Court in *M.Sakthivel v The General Manager, Regional Office of the Food Corporation of India* [W.P.No.2319 of 2010 dated 09.02.2010]. In that particular case, not only was the petitioner therein proceeded with disciplinary proceedings, but more importantly his action also invited an FIR to be registered against him by the CBI. Taking into consideration that particular fact which went to the root of the acts of misappropriation or misconduct, learned Single Judge justified initiation of disciplinary proceedings. Though the petitioner herein had not fallen into such a deep well, in the instant case, still it would be apt to extract the reasoning of the learned Single Judge:-

"25. The other contention that in respect of misconduct or irregularity committed in the Co-operative Society run by the employees, no action can be taken also cannot be accepted.



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First of all, it is the society run by the employees of the same Corporation. Only by virtue of their being employees of FCI, they are eligible for membership in the said society. Many times, it is noticed that employees, who are holding office and are Board of Directors of such societies, are given duty relief by the employer to attend to the Society's work. Even otherwise, since CBI has registered a criminal case under the Prevention of Corruption Act, which charge came to bed only because the petitioner is a "public servant" and was allegedly in possession of assets disproportionate to known sources of income. Hence that contention also must fail."

33.1 Even in that particular case, the employee was alleged to have committed acts of misappropriation in a cooperative society allied with the corporation where he worked. It had been observed that the members of the cooperative society were the employees of the Food Corporation of India and, therefore, the right of the employer to initiate disciplinary proceedings was recognized and upheld.

34. Learned counsel for the petitioner placed reliance on the judgment in *Chief of Army Staff and others v Major Dharam Pal Kukrety* [(1985) 2 SCC 412], and more importantly, placed reliance on paragraph 5, which reads as follows:-

"The same contentions, as were raised before the High Court, were taken before us at the hearing of this Appeal. We will first deal with



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the Appellants' preliminary objection that the Respondent's writ petition was not maintainable as being premature. It was the Respondent's case that the Chief of the Army Staff had no jurisdiction to issue the impugned show cause notice after he had been again found not guilty by the court-martial on revision. The said notice expressly stated that the Chief of the Army Staff was of the opinion that the Respondent's misconduct as disclosed in the proceedings rendered his further retention in service undesirable and asked him to submit his explanation and defence, if any, to the charges made against him. If the Respondent's contention with respect to the jurisdiction of the Chief of the Army Staff to issue the said notice were correct, the Respondent was certainly exposed to the jeopardy of having his explanation and defence rejected and he being removed or dismissed from services. Were the said notice issued without jurisdiction, the Respondent would have then suffered a grave, prejudicial injury by an act which was without jurisdiction. Where the threat of a prejudicial action is wholly without jurisdiction, a person cannot be asked to wait for the injury to be caused to him before seeking the Court's protection. If, on the other hand, the Chief of the Army Staff had the power in law to issue the said notice, it would not be open to the Respondent to approach the court under Article 226 of the Constitution at the stage of notice only and in such an event his writ petition could be said to be premature. This was, however, not a contention which could have been decided at the threshold until the court had come to a finding with respect to the jurisdiction of the Chief of the Army Staff to issue the impugned notice. Having held that the impugned notice was issued without any jurisdiction, the High Court was right in further holding that the Respondent's writ petition was not premature and was maintainable."



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34.1 The Chief of Army had issued a notice calling upon the respondent therein, to show cause as to why he should not be removed from service. The authority of the appellant / Chief of Army Staff to issue such a notice was put into test. The notice was struck down by the Hon'ble Supreme Court. The facts however distinguishable from this case.

35. Reliance was also placed on a Division Bench judgment in the case of *T.Retnapandian v Tamil Nadu Cements Corporation Limited Rep. By its Chairman cum Managing Director and others* [W.A.No.4299 of 2019 dated 21.06.2023]. The Division Bench in that particular case had stated that private business or trade or occupation by a family member cannot be prohibited under the rules of the employer. In that particular case, the wife of the appellant had begun to construct the house. Disciplinary proceedings were initiated against the appellant. Quite correctly, the Division Bench held that the appellant cannot be proceeded against for an independent business of his wife. The ratio however does not advance the case of the petitioner.

36. I have given my careful consideration to the arguments



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advanced and to the materials on records.

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37. The facts are clear. The facts are straight forward. The appellant was an officer under the respondent. He was also incidentally, a member of the Managing Committee, Treasurer and also President of what can be called as NABARD Employees Cooperative Society. He could have exercised caution while holding such posts. Unfortunately, his acts had invited charges of misappropriation of quite a substantial sum of money. Judicial review would not lie on facts in an enquiry proceedings but on the procedure which had been adopted. There was a first round of departmental proceedings which had been initiated and that suffered an adverse order before the Hon'ble Supreme Court and also by the High Court of Punjab and Haryana. Thereafter, the impugned second charge memo was issued to the petitioner herein when he was transferred to Chennai.

38. The issue is whether such second charge memo could be issued when it was *pari materia* on the same facts as contained in the first charge memo. The answer is 'NO'.

39. When a person is charged with a particular offence and



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later, after explanation is given, an enquiry officer is appointed and disciplinary proceedings are conducted, then if the disciplinary proceedings are interfered with by a Court, in this case by the Hon'ble Supreme Court, then if at all the respondent still wanted to proceed against the employee they should revive the earlier charge memo. They should have sought such permission before the Hon'ble Supreme court. They cannot merely hide behind the claim that since the matter had suffered an order of dismissal on technical grounds they have the right to issue a second charge memo against the employee. This is unheard of in departmental proceedings. The charge memo should proceed to run its entire course. The respondents were represented before the Hon'ble Supreme Court. They knew that the grounds raised touched upon violation of principles of natural justice during the earlier departmental proceedings.

40. When that was the ground raised before the Hon'ble Supreme Court then it was incumbent on the part of the respondents to have sought liberty to proceed again on the same charge memo. Failure to even seek liberty would not give them leverage to issue a second set of charges on the very same set of facts. That both the charge memos related to practically the same



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set of facts is not denied or disputed. They both surround the main allegation that the petitioner was responsible for misappropriation while functioning as office bearer in the society. Let me extract the operative part of order of the Hon'ble Supreme Court in C.A.No.10809 of 2014:-

"9. The narration of the facts, above mentioned, indicates quite clearly that the procedure adopted by the Inquiry Officer was completely unsatisfactory and arbitrary. No opportunity was given to the appellant either to examine the documents that were sought to be relied upon by the Inquiry Officer and indeed copies of the documents were not made available to the appellant. Similarly, the Inquiry Officer examined three witnesses without giving an opportunity to the appellant to even know their names in advance.

10. In the absence of any proper procedure having been followed by the Inquiry Officer, there is no doubt that the departmental proceedings require to be quashed and we do so accordingly.

11. As a consequence of quashing the disciplinary proceedings as well as the inquiry report, we set-aside the order of dismissal passed against the appellant and the order rejecting his departmental appeal as well as the order dismissing his writ petition.

12. The appeal is allowed in the above terms. The appellant will be entitled to all consequential benefits. No costs."

41. It is not the case of the respondents herein that they were not heard by the Hon'ble Supreme Court or that they did not



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have any opportunity to seek leave or liberty to proceed once again and re-commence enquiry on the charges already framed. No employee can be proceeded against on the same set of facts again and again. It should be once and that should run its normal course.

42. The second vital aspect so far as the present writ petition is concerned is the competency of the officer who issued charge-sheet. In this connection, the Chairman of the respondent had taken a conscious decision to appoint an enquiry officer in the first instance. The document relating to that had been presented before this Court and let me extract that particular document in entirety:-

*""Appointment as Adhoc Competent Authority
We advise you that the Chairperson has appointed you as an adhoc competent authority on the matter pertaining to NABARD Employees Cooperative Urban Salary Earners Thrift and Credit Society, Chandigarh vide Rule 47(3) of NABARD (Staff) Rules, 1982.
We are forwarding herewith the necessary case papers for your kind perusal and further actino.
Yours faithfully
Sd/-
(A.K.Srivatsava)
General Manager"*

*"1.Preliminary Audit Report in respect of the above Society has been submitted by the Assistant Registrar and an Administrator has been appointed to set the records straight.
2.Show cause notices have been issued to 13 employees of NABARD in this case.*



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3.The employees who have been named in the Audit Report are a mix of Officers cadre (up to Grade 'C') and Group B & C and further, are spread over 3 different ROs (Chandigarh – 9, Dehradun – 3 and Shimla – 1).

4.As per the amended (February 2004) Staff Rules, 1982 for Officers in Grade A to C in the ROs,the CGM in-charge is the Competent Authority, while Group B and C, GM-in-charge of Administration is the Competent Authority.

5.Under the circumstances, for the sake of uniformity in the disciplinary proceeding and to avoid divergent views, it will be necessary to appoint an ad-hoc Competent Authority from the Head Office.

6.I have consulted Law Department in this matter and recommend that Shri M.P.Mohanan, CGM. HRMD,HO may be appointed as ad-hoc Competent Authority.

7. CP may please approve his appointment as ad-hoc Competent Authority vie Rule 47(3) of Staff Rules, 1982.””

43. The sixth clause referred above clearly shows that the law department had recommended the Chief General Manager, Head Office to be appointed as the ad-hoc Competent Authority. He had then initiated proceedings but unfortunately, was himself charged with violation of principles of natural justice. The proceedings were cut half way through by the orders of the Hon'ble Supreme Court and of the High Court of Punjab and Haryana.

44. The Chief General Manager at Chennai had no authority to issue such a second charge memo. The rules are clear in this particular aspect. Rule 47 reads as follows:-



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"47. Penalties (1) Without prejudice to the provisions of the other Rules ,an employee who commits a breach of the Rules of the National Bank or who displays negligence, or indolence or who know knowingly does anything detrimental to the interests of the National Bank or in conflict with its instructions, or who commits a breach of discipline or is guilty of any other act of misconduct, shall be liable to the following penalties:

- (a) reprimand;*
- (b) delay or stoppage of increment or promotion*
- (c) degradation to a lower post or grade or to a lower stage in his incremental scale;*
- (d) recovery from pay of the whole or part of any pecuniary loss caused to the National Bank by the employee;*
- (dd) compulsory retirement;*
- (e) dismissal*

Explanation – As employee who is otherwise eligible for voluntary retirement in terms of sub-rule (3) or (3A) of Rule 19 only may be subjected to the penalty at (dd) above and in that case, the employee will be eligible for all retirement benefits, ordinarily admissible on voluntary retirement under sub-rule (3) or (3A) of Rule 19.

(2) No employee shall be subjected to the penalties, except by an order in writing signed by the Competent Authority and no such order for penalties, other than that at (a) of sub-rule (1), shall be passed without the charge or charges being formulated in writing and given to the said employee so that he shall have reasonable opportunity to answer them in writing or in person, as he prefers, and in the latter case his defence shall be taken down in writing and read out to him;

Provided that requirements of this sub-rule may be waived if the facts on the basis of which action is to be taken have been established in a court of law or Court Martial or where the employee has absconded or where it



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is for any other reason impracticable to communicate with him or where there is difficulty in observing them and the requirements can be waived without injustice to the employee. In every case where all or any of the requirements of this sub-rule are waived, the reasons for doing so shall be recorded in writing.

(3) Notwithstanding anything contained in sub-rule (2) or in any other Rule, if two officers in different grades or an officer and an employee in Group 'B' or Group 'C' are involved jointly in an incident and disciplinary proceedings are sought to be instituted against both of them and the Chairman is of the opinion that having regard to the facts and circumstances of the case, the Competent Authority in respect of both the officers/employees should be the same, the Chairman may direct that the Competent Authority in respect of the higher Group employees as defined in sub-rule (i) of Rule 3 shall be the Competent Authority in respect of both the officers/employees involved and a common enquiry shall be held into the charges against both of them and the delegation under sub-rule (4) of the enquiry under this Rule and the procedure, with the exception of the final order shall be in favour of the same enquiry officer."

44.1 Sub-rule (i) of Rule 3 stated above is as follows:-

"the Competent Authority means:

1) the Chairman in the case of Officers in Grade 'F' and above in all matters falling under Chapters II, III and IV of these Rules, i.e., matters relating to service conditions, seniority, conduct / discipline etc.

2) (i) the Managing Director in the case of Officers in Grade 'D' and 'E' in all matters and in the case of Officers in Grade 'F' and above in all matters other than those falling under Chapters II, III and IV of these Rules.



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(ii) (a) the Chief General Manager, Human Resources Management Department, Head Office in the case of Officers in Grades 'A', 'B' and 'C' in Head Office.

(b) the Chief General Manager, Human Resources Management Department, Head Office in the case of Officers in Grades 'A', 'B' and 'C' at Regional Offices which are headed by Grade 'D' officers.

(c) Chief General Manager / Officer-in-Charge in Grade 'E' of Regional Office, Principal of Training Establishment in case of Officers in Grades 'A', 'B' and 'C'.

3) the General Manager, Human Resources Management Department in case of employees in Groups 'B' and 'C' working at Head Office.

4) General Manager in-charge of Personnel Administration or in case there is no General Manager in-charge of Personnel Administration, Deputy General Manager, Personnel Administration in the case of employees in Groups 'B' and 'C' working at Regional Office and Sub-office under the control of the Regional Office.

5) General Manager in-charge of Personnel Administration or in case there is no General Manager in-charge of Personnel Administration, Deputy General Manager, Personnel Administration in the case of employees in Groups 'B' and 'C' working at Training Establishments.

It means in regard to any matter or power to be dealt with or exercisable by the Chairman under these Rules which has been delegated to any other authority, the authority to whom the disposal of the matter or the exercise of the power has been delegated."

45. It very clearly states that the Chief General Manager at the Headquarters alone can initiate disciplinary proceedings. Though both the officers may be of the same rank and as pointed



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out by learned Senior Counsel for the respondents, the one factor which should be kept in mind in disciplinary proceedings is that the delinquent should not be holding a superior / higher rank than that of the enquiry officer, still, when the Rules provide that Chief General Manager at Headquarters should be enquiry officer, the issuance of the second charge memo by the Chief General Manager, Chennai strikes at the very heart of the matter.

46. I would hold that the respondents have a right to conduct disciplinary proceedings in view of the judgment of the learned Single Judge of this court in *M.Sakthivel* (supra) and *Burdwan Central Cooperative Bank Limited* (supra). But that does not mean that they have the right to issue multiple charge memos on the same set of facts against a delinquent. They have to issue a charge memo, once and proceed in the manner known to law. If that proceedings are interfered with, then leave / liberty must be sought, seeking to re-commence on the basis of the same charge memo and proceed further. The second charge memo may be a mirror image of the first charge memo but the authority to issue a second charge memo, cannot be encouraged in service jurisprudence except under authority of law. The authority to issue a charge memo is a vested right that does not cloak the employer



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with the right to issue multiple charge memos. They can re-commence the enquiry proceedings at the stage where it was stopped or at the stage where it was interfered with. But they cannot restart the entire proceedings once again by issuing a second charge memo. On that ground, the relief sought in the writ petition necessarily has to be granted.

47. I am informed that the enquiry officer had conducted the enquiry but the entire proceedings are set aside.

48. The writ petition is allowed. No costs. Connected miscellaneous petitions are closed.

31.07.2023

Index:Yes
Neutral Citation:Yes
ssm

To

- 1.The Chairman,
National Bank for Agriculture and Rural Development
C-24, G Block, Bandra Kurla Complex,
Post Box No.8121,
Bandra (E), Mumbai – 400 051.
- 2.The Chief General Manager,
NABARD, Regional Office.
- 3.The Deputy General Manager
NABARD Regional Office



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Respondents 2 & 3 at
No.48, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034

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C.V.KARTHIKEYAN,J.

ssm

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31.07.2023