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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 20th March, 2023*

\+ W.P.(C) 3439/2023

SH. DINESH KUMAR ..... Petitioner
Through: Mr. R.S. Gautam, Advocate.

versus

STATE BANK OF INDIA AND ORS. ..... Respondents
Through: Mr.Rajiv Kapur, Mr. Akshit Kapur, Mr. Harsh and Mr. Tushar Bagga, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed by the Petitioner seeking the following reliefs:-

> *"A. Issue a writ of mandamus to the respondent No. 2 with the direction for quashing the impugned order dated 17.06.2021 and re inquiry order dated 11.01.2023 passed by the respondent No.2, and reinstating the petitioner in service with all the consequential benefits.*
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> *B. Issue an appropriate writ directing the respondents to pay the cost to the petitioner."*

2. Petitioner joined the service of the Respondents/State Bank of India (hereinafter referred to as 'the Bank') on 14.03.1988 as Clerk/Typist and was promoted from time to time and lastly as Deputy Manager (Accountant/Service Manager). Petitioner served the Bank upto 14.06.2021, without any blemish. On 17.06.2021, Petitioner was suspended and against the suspension order, he filed an appeal before the Appellate Authority on 15.07.2021. Not getting any information

on the status of the appeal, Petitioner filed W.P.(C) 11295/2021 in this Court seeking quashing of the suspension order and reinstatement with consequential benefits. Writ petition was disposed of on 04.10.2021 with a direction to the Respondents to decide the appeal within six weeks, if not already decided and if decided to communicate the order, enabling the Petitioner to take recourse to remedies available in law for assailing the appellate order. Thereafter, Petitioner was informed that his appeal had been rejected on 02.11.2021 and a copy of the order was sent to him *albeit* after a delay i.e. on 10.12.2021.

3. Charge sheet dated 22.12.2021 was served on the Petitioner and as per the imputation of charges, Petitioner had committed various lapses/irregularities in matter of cash shortage/misappropriation of funds from currency chest and ATM/CDM. Petitioner submitted his reply to the charge sheet on 14.01.2022 and thereafter filed a writ petition being W.P.(C) 2543/2022 on 01.02.2022, challenging the order of the Appellate Authority pertaining to the suspension order. The writ petition was dismissed on 09.02.2022, observing that it would be appropriate for the Petitioner to join the inquiry as and when summoned by the Inquiry Officer and the Court observed that no ground was made out for interference at that stage.

4. Thereafter, Inquiry Officer was appointed and inquiry proceedings continued wherein several objections were taken by the Petitioner objecting to the procedure followed by the Inquiry Officer. After conclusion of the inquiry, the Inquiry Officer rendered the inquiry report, a copy of which was furnished to the Petitioner to reply to the same within seven days of receipt of the report. Petitioner submitted his reply against the findings of the Inquiry Officer, whereafter he received a letter dated 04.08.2022, asking him to appear and submit written submissions, if any, through video conferencing on

06.08.2022, against the tentative order of imposing major penalty of dismissal under Rule 67(j) of SBI Officers' Service Rules, 1992 (hereinafter referred to as 'SBIOSR, 1992'). Petitioner requested for some more time and the hearing was adjourned to 16.08.2022. Petitioner appeared and also submitted his representation. Thereafter, a letter dated 11.01.2023 was received by the Petitioner asking him to participate in a second inquiry, which was opposed by the Petitioner. Aggrieved by the suspension order and the action of the Bank in holding a second inquiry, Petitioner filed the present writ petition seeking quashing of the orders dated 17.06.2021 and 11.01.2023 as well as for a direction to the Bank to reinstate him with consequential benefits.

5. Learned counsel for the Petitioner challenges the suspension order on the ground that he could not be suspended without holding a proper inquiry and hearing the Petitioner. Despite the suspension order having been issued on 17.06.2021, Petitioner has not been reinstated despite passage of nearly two years. Petitioner is innocent and has an unblemished record of service since 1988 when he joined the Bank as a Clerk. The allegations in the charge-sheet are vague and there are no details of the alleged shortage of cash in the currency chest or ATMs, etc. It is also contended that having proceeded with the first inquiry upto the stage of taking a tentative decision for imposing major penalty of dismissal, it is not open to the Bank to order a further inquiry.

6. Issue notice.

7. Mr. Rajiv Kapur, learned counsel accepts notice on behalf of Respondents/Bank.

8. At the outset, Mr. Rajiv Kapur, learned counsel appearing for the Bank submits that the writ petition is pre-mature and cannot be

entertained at this stage. Bank is not intending to hold a second inquiry into the allegations and the order dated 11.01.2023 has been passed pursuant to various issues/objections raised by the Petitioner himself during the personal hearing on 16.08.2022, for the purpose of imposing the penalty. Once the Petitioner flagged certain points pertaining to the inquiry procedure, both orally and in writing on 08.08.2022, before the Chief General Manager (HR), in order to maintain fairness and ensure compliance of principles of natural justice, re-investigation was ordered and from the report of the Investigating Officer, a few new facts emerged and substance was found in the issues raised by the Petitioner. In this backdrop and in the interest of the Petitioner, matter was remitted to the Inquiring Authority for further inquiry into the new facts, in terms of Rule 68 (2)(ii) of the SBIOSR, 1992. Insofar as the order of suspension is concerned, the same requires no interference at this stage since the inquiry has reached near conclusion and the period of suspension as well as the salary/allowances payable during the said period, shall be regulated depending on the outcome of the inquiry.

9. I have heard the learned counsels for the parties and examined their contentions.

10. This Court finds merit in the contentions raised on behalf of the Bank. The inquiry proceedings have reached near conclusion, as rightly pointed out on behalf of the Bank and suspension order cannot be challenged at this stage. Once the inquiry concludes, it would be in the domain of the Bank to take a decision at the appropriate stage for regulating the suspension period as well as the emoluments payable, depending on the outcome of the inquiry and in accordance with law.

11. Insofar as the order dated 11.01.2023 is concerned, plain reading of the order shows that Petitioner was called upon for a

personal hearing with regard to the tentative decision of the Bank for imposition of major penalty of dismissal and he was also permitted to file his written submissions. Petitioner admittedly appeared for the personal hearing and submitted his grievances in writing. From the issues flagged by the Petitioner, more particularly, in his letter dated 08.08.2022 addressed to Chief General Manager (HR), it emerged that there was substance in his grievances and in order to be fair to the Petitioner and ensure that principles of natural justice are complied with in letter and spirit, Chief Manager (Investigation) was tasked to re-investigate the matter and examine the issues raised by the Petitioner. The Investigating Officer submitted his report from which new facts are stated to have emerged. It was, therefore, decided by the Competent Authority to conduct further inquiry into the new facts in order to ascertain the veracity of the objections raised by the Petitioner and in this background, another Inquiry Officer was appointed since the earlier Inquiry Officer had retired. Petitioner has been called upon to participate in the further inquiry and submit his defence. It is clearly stated in the order that the previous charge sheet, other documents/ evidences, etc. would remain unchanged and Petitioner is at liberty to take the assistance of a Defence Assistant.

12. From a reading of the impugned order, this Court does not find any infirmity in the order dated 11.01.2023. It is only at the behest of the Petitioner that the Competent Authority has decided to continue the inquiry further and give him a chance to present his defence in compliance and consonance with principles of natural justice.

13. Mr. Kapur submits that the Petitioner is refusing to participate in the inquiry despite having himself raised issues which triggered the further inquiry and therefore, if the Petitioner is not interested in participation, the inquiry can be closed at this stage and the

Disciplinary Authority will take a decision with regard to the penalty. At this stage, counsel for the Petitioner, on instructions, submits that Petitioner is willing to participate in the inquiry with a caveat that the earlier order dated 04.08.2022, whereby a tentative decision was taken to impose the penalty of dismissal is set aside and a fresh decision be taken after the inquiry is complete.

14. This Court finds merit in the contention raised by the Petitioner to the extent that once the Bank has taken a decision to continue the inquiry further, its earlier tentative decision of imposing the penalty of dismissal cannot sustain as that would amount to pre-judging the matter, both on the aspect of whether the Petitioner is to be exonerated or not and if so, the penalty that is to be imposed. Needless to state, even a tentative decision for imposing a penalty can only be taken after the inquiry concludes.

15. Accordingly, the writ petition is disposed of, leaving it open to the Petitioner to participate in the inquiry proceedings sought to be continued by order dated 11.01.2023, if so advised. Needless to state, if the Petitioner participates in the proceedings, a fresh decision shall be taken by the Bank only after conclusion of the inquiry, in accordance with law. In this view, the order dated 04.08.2022 is quashed and set aside. In case the Petitioner chooses to stay away from further proceedings, it would be open to the Bank to take a decision on the material before the Inquiring Authority, both under the earlier inquiry as well as the fresh facts which have emerged, pursuant to a re-investigation at the behest of the Petitioner.

16. Learned counsel for the Petitioner, at this stage, also presses for a direction to the Bank to enhance the subsistence allowance since he has been paid the allowance only @ 50% for the last nearly two years. *Albeit* this relief is not within the scope of the present petition,

however, it is left open to the Petitioner to make a representation in this regard to the Bank and on receipt of such a representation, if any, the Bank shall decide the same in accordance with law.

17. Writ petition stands disposed of.

JYOTI SINGH, J

MARCH 20, 2023/*shivam*/kks