IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.Nos.15016 & 15017 of 2020 and
W.M.P.Nos.18699, 18700, 18701 & 18702 of 2020

Prakasa Rao Borugadda
... Petitioner in both W.Ps

Vs.

1.The General Manager,
Discipline Management Hub (South),
State Bank of India,
7th Floor, State Bank Building,
157, Anna Salai, Chennai - 600 002.

2.The General Manager,
Network-2, State Bank of India,
Local Head Office,
Poojappura P.O. - 695 012,
Thiruvunanthapuram, Kerala.

3.The Chief Manager (Sanctions),
Inquiring Authority,
State Bank of India,
RASMEC - Shoranur,
Ottapalam, Palakkad District, Kerala - 679 101.
... Respondents in both W.Ps

Prayer in both W.Ps: Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records on the file of the first respondent in DMHUB(S)/TRI/KR/2020-21/174, DMHUB(S)/TRI/KR/2020-21/175 dated 07.10.2020 and the second respondent in VIG/CON/268 dated 28.08.2020 along with his prejudged views on findings of the third respondent and the unnumbered report of the third respondent dated 27.08.2020 and to quash the same.

<u>In both W.Ps</u>

For Petitioner : Mr.M.Ravi, for
Mr.M.Velmurugan

For Respondents : Mr.C.Mohan for
Ms.A.Rexy Josephine Mary for
M/s.King & Partridge

COMMON ORDER

These Writ Petitions have been filed seeking issuance of a Writ of Certiorari, to call for the records on the file of the first respondent in DMHUB(S)/TRI/KR/2020-21/174and DMHUB(S)/TRI/KR/2020-21/175 dated 07.10.2020 and the second respondent in VIG/CON/268 dated 28.08.2020 along with his prejudged views on findings of the third respondent and the unnumbered report of the third respondent dated 27.08.2020 and to quash the same.

2. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

3. The issue that arise for consideration in both the Writ Petitions is

one and the same and between the same parties and such, both the Writ Petitions are heard together and being disposed of by this common order.

4. The petitioner herein initially joined service in the State Bank of Travancore and subsequently, promoted to the post of Manager (MMGS-III) in the year 2015. Thereafter, the State Bank of Travancore was merged with the State Bank of India. While so, in the year 2019, the petitioner was subjected to disciplinary proceedings by issuing two charge memos (i.e) charge sheet Ref.No.VIG/CON/1302 and another charge sheet bearing Ref.No.VIG/CON/1303 dated 18.03.2019. Thereafter, the petitioner submitted his explanation and an Inquiring Authority was appointed for conducting enquiry against the charges and a final report of the Inquiring Authority was submitted on 27.08.2020 to the first respondent. Thereafter, the first respondent through a letter dated 28.08.2020 communicated the report of the Inquiring Authority to the petitioner together with the views of the first respondent / Disciplinary Authority on the charges. In response to the same, the petitioner submitted his explanation on 08.09.2020.

5. The Disciplinary Authority having received the explanation from

the petitioner, issued another notice dated 07.10.2020, proposing to impose major penalty of dismissal from service in terms of regulations 67(J), State Bank of Travancore (Officers') Service Regulations, 1979, in respect of the first charge memo and another letter dated 07.10.2020 proposing to impose the major penalty of dismissal from service in terms of Rule 67 (J) of the State Bank of India Officers' Service Rules (SBIOSR), 1992. It is aggrieved by the said communication dated 07.10.2020, proposing to impose the punishment of dismissal from service and the communication dated 28.08.2020, the petitioner approached this Court by way of filing the present Writ Petitions.

6. Though several contentions were raised in the affidavit filed in support of the Writ Petitions, raising objections on the manner in which the enquiry was conducted, the manner in which the witnesses were examined and also on the ground of not affording sufficient opportunity to the petitioner etc., this Court is not inclined to go into such aspects at this stage as all such objections would fall within the purview of the Disciplinary Authority for consideration at the first instance and the

disciplinary proceedings are yet to be finalised. Hence, this Court at this stage is inclined to examine the contentions raised by the petitioner to the limited extent of not following the procedure required to be followed in law, in the matter of furnishing copy of the report of the Inquiring Authority and consideration of the objections raised by the petitioner against the report of the Inquiring Authority and proper consideration of the same by the Disciplinary Authority.

7. Through communication dated 28.08.2020, the Disciplinary Authority, while furnishing the report of the Inquiring Authority, also furnished the views of the Disciplinary Authority and the findings of the Inquiring Authority against each charge. The relevant paragraphs from the said communication reads as follows:

> *"We invite a reference to letter No.VIG/CON/156 dated 24.06.2020 and the subsequent inquiry proceedings.*
>
> *2. We forward herewith a copy of the Inquiry Report along with the tabular statement containing the views of the Disciplinary Authority on the findings of the Inquiring Authority against each allegation for your final submission on the report."*

8. A perusal of the view of the Disciplinary Authority as furnished

through the above communication makes it clear that the Disciplinary Authority having taken note of the charge levelled against the petitioner and the findings of the Inquiring Authority on the respective charge and under the column 'views of the Disciplinary Authority', the Disciplinary Authority has recorded a categorical conclusion that he agree with the views of the Inquiring Authority and treat the charges are proved. The same is the case in respect of all the charges covered by both charge sheets.

9. There is no dispute or controversy on the settled legal position as to whether the delinquent employee is entitled for a copy of the report of the Inquiring Authority before the Disciplinary Authority acts upon such report or not irrespective of the fact whether such opportunity is provided under the relevant Discipline and Appeal Rules or not. By virtue of the law laid down by the Hon'ble Apex Court, such right of delinquent employee for receiving the report of the Inquiring Authority and his right to raise objections on the report of the Inquiring Authority is held to be a mandatory requirement. As held by the Hon'ble Apex Court in the case of the ***Managing Director, ECIL Vs. B.Karunakar, reported in 1993 (4)***

SCC 727 and the decision of this Court in ***W.A.No.1674 of 2017***, the relevant paragraphs from the order dated ***03.01.2023 passed in W.A.No.1674 of 2017*** reads as under:

> *"8. It is therefore clear that the Disciplinary Authority when it decides to differ from the conclusions of the Enquiry Officer has to record the fact that it proposes to differ, the tentative reasons for such difference and call upon the Delinquent Officer to explain as to why it should not differ. Then it will be open to the Delinquent Officer to persuade the Disciplinary Authority to agree with the conclusions of the Enquiry Officer. If the Disciplinary Authority records its conclusion, as has been done in the present case the further opportunity contemplated becomes an empty formality.*
>
> *9. The Appellate Authority had also not considered this question and it had merely dismissed the Appeal by a non speaking order. The question as to whether the opportunity that is to be given after the Disciplinary Authority records its decision to differ from the Enquiry Officer?s findings has not been addressed by the Writ Court also. Though, the Writ Court had pointed out that the Disciplinary Authority has differed, the Writ Court had found that such difference is justified on the basis of the evidence. The actual import of the judgment of the Hon?ble Supreme Court in Punjab National Bank and Others v. Kunj Behari Misra, is to the effect that while it is open to the Disciplinary Authority to differ from the findings of the Enquiry Officer, it shall not conclude and render a finding on the charges without giving an opportunity to the delinquent employee. This aspect, we find, has not been*

highlighted before the Writ Court resulting in the Writ Court dismissing the Writ Petition.

10. Even though this question has not been dealt with by the Writ Court, we find that once the law laid down by the Hon?ble Supreme Court is very clear and emphatic, the requirements set out therein cannot be waived or given up by the parties. We are therefore left without any other alternative but to interfere and to set aside the order of the Writ Court as well as the order of the Authorities imposing the punishment only on the sole ground that the Disciplinary Authority had chosen to conclude that the charges are proved without giving an opportunity to the delinquent employee. The opportunity that has been given after 07.05.2012 had in fact become an empty formality since the decision to conclude that the charges have been proved has been reached on 07.05.2012."

10. However, the learned Standing Counsel for the respondent Bank though not disputed the settled legal position as above, contended that, unless and until the petitioner allege causing of any prejudice and establish such prejudice caused to the petitioner, he is not entitled to raise objection on the ground of violation of principles of natural justice or on the ground that the Disciplinary Authority has recorded his views on the report of the Inquiring Authority and placed reliance on the decisions of

the Hon'ble Apex Court in the case of ***State of Uttar Pradesh Vs. Sudhir Kumar Singh and Others, reported in (2021) 19 SCC 706 and State Bank of India and Others Vs. Atindra Nath Bhattacharyya and Another, reported in (2019) 8 SCC 134*** and yet another decision in the case of ***State Bank of India and Others Vs. B.R.Saini, reported in (2018) 11 SCC 83***.

11. As there is no controversy that the petitioner is entitled for receipt of the copy of the report of the Inquiring Authority and his right to raise his objections on such report, the only question that needs to be considered is whether there was any prejudice caused to the petitioner by virtue of the Disciplinary Authority recording his views on the report of the Inquiring Authority even before the petitioner was afforded with an opportunity to raise his objections on the report of the Inquiring Authority.

12. If the Disciplinary Authority itself conducts an enquiry and then comes to a conclusion either holding that the charges are proved or not proved, the Disciplinary Authority is always entitled to proceed

further and pass appropriate orders by following the procedure. But, in case when any other authority other than the Disciplinary Authority is entrusted with the responsibility of conducting enquiry and such authority having conducted the enquiry, submits his report, the delinquent employee is entitled to raise his objections against the findings recorded in the enquiry report, the procedure that was followed during the course of enquiry etc., on receipt of the report of the Inquiring Authority.

13. In terms of the settled legal position, it is only on receipt of the objections, if any, or the comments of the delinquent employee on the report of the Inquiring Authority, the Disciplinary Authority is supposed to consider the conclusions arrived at by the Inquiring Authority and the objections, if any, raised by the delinquent employee together and then, arrive at his own conclusion on the charges.

14. But in the instance case, admittedly, the Disciplinary Authority even before the report of the Inquiring Authority is furnished to the delinquent employee, examined the views recorded by the Inquiring

Authority in detail and recorded a reasoned views holding that the charges framed against the petitioner are proved. While furnishing the report of the Inquiring Authority itself, the Disciplinary Authority communicated his views also to the delinquent employee. If the Disciplinary Authority has already arrived at his conclusion on the charges and holding such charges as proved, any amount of opportunity given to the delinquent employee to raise his objections against the report of the Inquiring Authority are of no consequences and the very purpose of furnishing the copy of the report of the Inquiring Authority to the delinquent employee is rendered useless. As already noted above, the right of the delinquent employee to receive a copy of the Inquiring Authority's report and to raise objections about the same is held to be mandatory requirement in concluding the disciplinary proceedings. But in the instant case, though the copy of the report was furnished to the delinquent employee, the same is only reduced to an empty formality. Therefore, the action of the Disciplinary Authority in this regard is liable to be declared as illegal and contrary to the settled legal position.

15. The objection raised by the learned Standing Counsel appearing for the respondent Bank on the ground that the petitioner has not raised any objection on the ground of any prejudice being caused to him because of the conclusion arrived at by the Disciplinary Authority on the charges even before the report of the Inquiring Authority is furnished to the delinquent employee is concerned, this Court is of the considered view that the prejudice is apparent on the face of it as the valuable right of raising objection against the report of the Inquiring Authority was rendered useless by recording the conclusion of the Disciplinary Authority even before furnishing a copy of the report of the Inquiring Authority to the delinquent. Therefore, the question of petitioner establishing the prejudice or pleading any such prejudice is not required.

16. Then, coming to the communication dated 07.10.2020, proposing to impose the punishment of dismissal from service under both the charge memos is concerned, the same has to go as a consequence of the conclusion arrived at by this Court on the aspect of furnishing of the report of the Inquiring Authority to the delinquent employee and on the

conclusions arrived at by the Disciplinary Authority on the charges even before the report was furnished to the delinquent employee. Even otherwise, as seen from the impugned communication dated 07.10.2020, there appears to be non-consideration of the submissions made by the delinquent employee in response to the communication dated 28.08.2020 through his representation dated 08.09.2020.

17. A perusal of the copy of the said representation dated 08.09.2020 submitted by the petitioner before the Disciplinary Authority shows that the petitioner has raised several objections running into 35 pages, indicating each and every aspects including the manner in which the enquiry was conducted by the Inquiring Authority. But the Disciplinary Authority while issuing show cause notice on the quantum of punishment through the impugned communication dated 07.10.2020 simply stated that "on consideration of submissions made by the delinquent employee through the letter dated 08.09.2020" and the Disciplinary Authority proposed to impose the penalty of dismissal from service. The relevant paragraphs from the said communication dated

07.10.2020 reads as under:

> *"Upon due consideration of the records of inquiry, the submissions made by you vide letter dated 08.09.2020, I as Disciplinary Authority propose to impose major penalty of "Dismissal" in terms of regulation 67(J) of erstwhile State Bank of Travancore (Officers') Service Regulations, 1979."*

18. From the above, it is clear that the Disciplinary Authority has not applied its mind to the objections raised by the petitioner through his representation dated 08.09.2020. But, in a mechanical manner, proceeded to propose a major penalty of dismissal from service. Yet another ground noticed from the material on record is that on the submission of the report of the Inquiring Authority dated 27.08.2020 on the very next date (i.e) 28.08.2020, the Disciplinary Authority communicated his view to the petitioner in an elaborate manner on both the charge memos. This itself shows that the Disciplinary Authority had acted with undue haste and issued the impugned communication dated 28.08.2020.

19. In the light of the above, the impugned communications dated

28.08.2020 and 07.10.2020 are liable to be declared as illegal and arbitrary and accordingly, the impugned communications are liable to be quashed. Accordingly, they are quashed. Consequently, the Disciplinary Authority is directed to consider the objections raised by the petitioner through his representation dated 08.09.2020 against the report of the Inquiring Authority dated 27.08.2020 and then take further steps in accordance with law. The petitioner is also granted liberty to submit any further objections, if any, against the report of the Inquiring Authority, within a period of three weeks from the date of receipt of a copy of this order. In case, if any such objections are submitted by the petitioner within the time stipulated above, the Disciplinary Authority / first respondent shall take into consideration such objections also along with the objection already raised earlier through the representation dated 08.09.2020 and take further steps to conclude the disciplinary proceedings. It is made clear that the Disciplinary Authority while deciding the matter as above, shall not take into consideration nor be influenced by the views that were already expressed by him on 28.08.2020.

20. Accordingly, these Writ Petitions are allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

01.08.2024

Index : Yes /No
Speaking / Non-speaking
Neutral Citation : Yes / No
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7th Floor, State Bank Building,
157, Anna Salai, Chennai - 600 002.

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MUMMINENI SUDHEER KUMAR, J.

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