IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-03-2025

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

WP No. 34486 of 2019

1. M.Suseendran

Petitioner(s)

Vs

1. The Chairman - Cum - Managing Director,
Indian Overseas Bank, Central Office, 763, Anna Salai,
Chennai - 600002

2.The General Manager/ Disciplinary Authority,
Zonal Office, 11/ 952 Cross Cut Road, Gandhipuram,
Coimbatore - 641012

Respondent(s)

PRAYER

Calling for the records of the 2nd respondent in ZO/ DA. GM(BARP)-ZO. VIG. 9297 and 9656. 509. 2019-2020 dated 01.08.2019 and to set aside the same as illegal and without jurisdiction

For Petitioner(s): Mr. S.Sathiaseelan

For Respondent(s): Mr. K.Srinisvasamurthy
for M/s.Row & Reddy

ORDER

This writ petition has been filed to call for the records in ZO/DA:GM(BARP)-ZO: VIG : 9297 & 9656 : 509 : 2019-2020 dated 01.08.2019 of the second respondent and to set aside the same as illegal and without jurisdiction.

2. Heard Mr.S.Sathiaseelan, learned counsel for the petitioner, Mr.K.Srinivasamurthy, learned counsel for the respondents and perused the materials placed on record, apart form the pleadings of the parties.

3. The petitioner, who was working as Chief Manager, has been suspended from service just two days prior to his date of superannuation. The impugned charge sheets were issued in respect of three loan accounts handled by the petitioner.

4. The learned counsel for the petitioner submitted that the above charge memo itself is illegal because it has been issued in violation of the Staff

Accountability Policy, IOB Pension Regulations, 1995. He further submitted that as per the above Regulations, no action should be initiated against any officials in respect of any allegations of loss after the expiry of four years from the date of the event and that too, not detected in two consecutive internal inspections. The procedure contemplated under the Staff Accountability Policy, IOB Pension Regulations, 1995 for disciplinary proceedings and the suspension has not been followed in the case of the petitioner and hence, the charges should be quashed.

5. The learned counsel for the respondents submitted that the fraud, misappropriation and criminal breach of trust was detected only on 27.10.2015 through the advice sent by the State Bank of Travancore, wherein it is stated that there is a prior mortgage in respect of the same property offered as collateral security by the borrower and they have initiated SARFAESI proceedings. As the petitioner has retired from service, the respondents has to get prior approval and the files have to be scrutinized by various authorities by the Regional Office, Zonal Office, Central Vigilance Officer, Competent

Authority and Disciplinary Authority. The process of initiating disciplinary proceedings against the petitioner has consumed much time and the petitioner was given with the charges on 01.08.2019, when the date of detection was on 27.10.2015.

6. The argument of the learned counsel for the respondents is that the fraud was detected on 27.10.2015 and the charges against the petitioner were issued on 01.08.2019, which is well within the period of four years from the date of detection.

7. On perusal of the Article of the Charges, it is seen that the fraud is found to be connecting to the following loans :-

Sl. No.	Account	Constitution/ Name of the Borrower	Loan Facility (Rs. in lakh)
1.	M/s.SBA Poultry Farm	Proprietary: Mrs.Santhamani	CC:1422: 55.00 Agri NCGC : 67140002 : 45.00
2.	M/s.Bannariamman Feed Mill	Proprietary: Mrs.A.Karunambal	CC : 192: 70.00 TL-26130018: 30.00
3.	M/s.Bannariamman Poultry Farm	Proprietary: Mr.K.Arumugam	AG-NG TL:261400008: 39.22 CC:214: 60.00

Insofar as the first loan is concerned, it is alleged that the above loan has been released on 11.04.2014. With regard to the second loan, it is stated that the loan has been released on 30.10.2013, 13.11.2013 and 18.11.2014. The third loan is seen to have been released on 11.03.2014 and 17.03.2014. The memorandum of allegations and articles of charges is dated 01.08.2019. The petitioner has retired from service on 30.06.2014. The petitioner has been placed under suspension on 28.06.2014 just two days prior to his date of superannuation.

8. Earlier, the petitioner was given with the charges on 25.06.2014 with regard to the disbursement pertaining to the loan account of M/s.Trymax Fly Ash Bricks and Tiles. The disciplinary proceedings have been initiated against the petitioner and he was imposed with the punishment of reduction of three stages of his basic pay. Thereafter, the petitioner was allowed to retire.

9. Insofar as the present charges are concerned, the last date on which the subject loan was disbursed, was of the year 2014.

10. According to the submission of the learned counsel for the petitioner, the charges ought to have been given in the year 2018 within four years from 2014. The charge memo was issued only on 01.08.2019, which is beyond four years. In this regard, it is relevant to refer Regulation 48 of the IOB Employees' Pension Regulations, 1995. The above regulation would read that no departmental proceedings can be initiated against the persons who are not in service in respect of any event that had taken place before four years of their retirement. The above Regulation is extracted as under:

> ***"48. Recovery of Pecuniary loss caused to the Bank:-***
>
> *(1) The Competent Authority may withhold or withdraw a pension or a part thereof , whether permanently or for a specified period , and order recovery from pension of the whole or part of any pecuniary loss caused to the Bank if in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service:*
>
> *provided that the Board shall be consulted before any final orders are passed:*
>
> *provided further that departmental proceedings, if instituted while the employee was in service, shall, after the retirement of the*

employee, be deemed to be proceedings under these regulations and shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee had continued in service:

(2) No departmental proceedings, if not instituted while the employee was in service, shall be instituted in respect of an event which took place more than four years before such institution: provided that the disciplinary proceedings so instituted shall be in accordance with the procedure applicable to disciplinary proceedings in relation to the employee during the p6riod of his service. "

11. The learned counsel for the respondents submitted that the irregularity itself was detected only on 27.10.2015 through the advice given by the State Bank of Travancore in respect of some other loan availed by the same borrower by mortgaging the same property. It is further submitted that as the matter has been scrutinized by various authorities, it took a considerable delay to be culminated into charges on 01.08.2019. It is claimed by the respondents that the charges have been detected by the respondents within four years time from the date of detection of the fraud. The records would show that the periodical inspections are conducted in respect of the loans disbursed by the branch in which the petitioner was working. In respect of the RTI information requested by the petitioner, the Public Information Officer of the respondents/Bank has given the information stating that the Annur Branch, where the petitioner has been working, has been inspected on 25.08.2014, 24.12.2015, 25.04.2017 and 12.12.2018. Despite four inspections were conducted, the Inspecting Authorities have not noted any irregularity in respect of the loans mentioned in the present charges. As the petitioner has attained the age of superannuation on 30.06.2014, the respondents/Bank knows the risk of limitation as per Regulation 48(2) of the IOB Employees' Pension Regulations, 1995.

12. Regulation 48(1) of the IOB Employees' Pension Regulations, 1995 would make an explicit reference about a misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of service and that has to be read along with Regulation 48(2) of the IOB Employees' Pension Regulations, 1995.

13. At least, after getting the intimation from the State Bank of Travancore, the respondents ought to have expedited the file movements in order to save the limitations as contemplated under Regulation 48(2) of the IOB Employees' Pension Regulations, 1995.

14. The learned counsel for the respondents attracted the attention of this Court to a judgment rendered by the Co-ordinate Bench of this Court in W.P. No. 29568 of 2015 ***(R.Saratha Vs. The General Manager, Disciplinary Authority, IOB, Chennai)***, wherein the charge sheet has been given on 06.07.2015 and the irregularities alleged to have been committed during January 2013. In that matter, only delay is involved and the question of limitation under Regulation 48(2) of the IOB Employees' Pension Regulations, 1995 is not involved. Hence, the above case is not applicable to the present issue.

15. In ***Brajendra Singh Yambem Vs. Union of India and another*** reported in (2016) 9 SCC 20, a similar rule provided under Central Civil Services Pension Rules, 1972 has been taken up for consideration. The Supreme Court has held that as per Rule 9(2) of the Central Civil Services Pension Rules, 1972, no disciplinary action shall be initiated in respect of any funds, which took place more than four years before such action. In the above judgment, it is held that when a particular act is contemplated to be done in a particular manner under any statute then the act must be done in that manner or not at all. The position of law on the above point is well established one and the respondents cannot deny the same. Despite the rules prescribe four years limitation from the date of event from initiating any disciplinary action against any retired employees, in the instant case, the same has not been followed in all seriousness. The respondents cannot take shelter under the intimation received from the State Bank of Travancore in the year 2015 for saving the limitation. This is for the simple reason that the respondents/Bank officials have themselves inspected the branch where the petitioner was working on several occasions and they would not find out any irregularity in this regard. Even after the advice received from the State Bank of Travancore by considering the limitation, the files were not moved as expeditiously as possible in order to save the limitation. Hence, I do not feel any exception be given to the petitioner for not complying the Regulation 48(2) of the IOB Employees' Pension Regulations, 1995. In this regard, it is appropriate to relevant portion of the above judgment as under:-

“37. The appellant challenged the correctness of the sanction and charges framed against him before the High Court of Gauhati, Imphal Bench in WP (C) No. 264 of 2010. The High Court quashed the memorandum of charges on the ground that it was issued after four years from the date of the alleged incident. Therefore, it was held that the said action of the disciplinary authority in initiating disciplinary proceedings is not valid in law as the same was barred by limitation as per the provision of Rule 9(2)(b)(ii) of the CCS (Pension) Rules, 1972. This important legal aspect of the case was not considered by the Division Bench of the High Court while setting aside the common judgment and order dated 1-9-2010 passed by the learned Single Judge in Writ Petition (C) No. 904 of 2008 (arms and ammunition case) and Writ Petition (C) No. 264 of 2010 (contraband ganja case).

38. It is a well-established principle of law that if the manner of doing a particular act is prescribed under any statute then the act must be done in that manner or not at all. The aforesaid legal position has been laid down by this Court in Babu Verghese v. Bar Council of Kerala [Babu Verghese v. Bar Council of Kerala, (1999) 3 SCC 422] , the relevant paragraphs of which are *extracted hereunder: (SCC pp. 432-33, paras 31-32)*

"31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor [Taylor v. Taylor, (1875) LR 1 Ch D 426] which was followed by Lord Roche in Nazir Ahmad v. King Emperor [Nazir Ahmad v. King Emperor, 1936 SCC OnLine PC 41 : (1935-36) 63 IA 372] who stated as under: (Nazir Ahmad case [Nazir Ahmad v. King Emperor, 1936 SCC OnLine PC 41 : (1935-36) 63 IA 372] , SCC OnLine PC)

> *'[W]here a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.'*

32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh [Rao Shiv Bahadur Singh v. State of Vindhya Pradesh, AIR 1954 SC 322 : 1954 Cri LJ 910] and again in Deep Chand v. State of Rajasthan [Deep Chand v. State of Rajasthan, AIR 1961 SC 1527 : (1961) 2 Cri LJ 705] . These cases were considered by a three-Judge Bench of this Court in State of U.P. v. Singhara Singh [State of U.P. v. Singhara Singh, *AIR 1964 SC 358 : (1964) 1 Cri LJ 263 (2)] and the rule laid down in Nazir Ahmad case [Nazir Ahmad v. King Emperor, 1936 SCC OnLine PC 41 : (1935-36) 63 IA 372] was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law."*

The aforesaid important aspect of the case should have been considered by the Division Bench of the High Court instead of mechanically accepting the argument advanced on behalf of the respondents that the case of the appellant squarely falls under Rule 9(2)(b)(i) read with Rule 9(2)(b)(ii) of the CCS (Pension) Rules, 1972. Therefore, the findings recorded by the Division Bench in the impugned judgment are erroneous in law and are liable to be set aside.

39. The learned Additional Solicitor General appearing on behalf of the respondents contends that the period of limitation of four years as stipulated in Rule 9(2)(b)(ii) of the CCS (Pension) Rules, 1972 does not apply to the facts of the present case for the reason that the departmental proceedings against the appellant had already been initiated while he was in service, and it was because of the pendency of the litigation before the High Court that the proceedings could not be concluded and further disciplinary proceedings were continued after obtaining prior *sanction of the President of India as required under Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972. The said contention is untenable both on facts as well as in law."*

16. In the another judgment of this Court in ***V.Chidambaram Vs. General Manager/Disciplinary Authority, IOB and Another*** reported in 2021 SCC OnLine Mad 16540, the very same arguments have been advanced with regard to Regulation 48(2) of the IOB Employees' Pension Regulations, 1995, wherein the Court has held that the Regulations 43 and 45 should be read along with 48 (2) of the IOB Employees' Pension Regulations, 1995 for the purpose of understanding the limitation. In this regard, it is appropriate to extract the relevant passage of the above order:-

> ***"Whether disciplinary proceedings initiated by the respondents is barred by limitation?***
>
> ***40.*** *From the materials on record, it is seen that the petitioner retired on 31.03.2014 as Assistant Manager, from Rajouri Garden Branch, Delhi of the respondents' Bank. The respondents initiated disciplinary proceedings by a charge memo dated 27.04.2018, which was issued by covering letter dated 05.05.2018 and was received by the petitioner on 14.05.2018. The above dates are not*

denied by the respondents. The learned Senior Counsel appearing for the petitioner contended that no disciplinary proceedings can be initiated against the pensioner for an event which took place four years earlier while the petitioner was in service. The learned Senior Counsel appearing for the petitioner relied on Regulation 48 (2) of the INDIAN OVERSEAS BANK (EMPLOYEES') PENSION REGULATIONS, 1995. According to the learned Senior Counsel, there is no dispute that the disciplinary proceedings was initiated after four years of his retirement for an "event" that took place much earlier than the retirement of petitioner. The learned Senior Counsel relied on the common order dated 18.08.2015 made in W.P.(C). Nos. 6382 of 2015 and etc., batch, rendered by the Hon'ble Delhi High Court. The identical issue of limitation was considered by the Hon'ble Delhi High Court and by order dated 18.08.2015, quashed the charge memo as time barred. The learned Senior Counsel referred to paragraph nos. 9, 13, 15 and 16 of the said judgment and prayed for quashing the impugned charge memo. The learned Senior Counsel further contended that the Regulations have to be read as a whole and Regulations 43 and 45 cannot be read separately and cannot contend that Regulation 48 (2) does not apply for a disciplinary proceedings in respect of Regulations 43 and 45. The limitation prescribed under Regulation 48 (2) applies to *disciplinary proceedings initiated under any of the Regulations.*

41. *On the other hand, it is the contention of the learned counsel appearing for the respondents that the disciplinary proceedings is initiated under Regulations 43 and 45 for withholding pension and not under Regulation 48 for recovery of any amount from the petitioner. The limitation prescribed in Regulation 48 (2) applies only when the respondents initiate disciplinary proceedings under Regulation 48 and it does not apply to disciplinary proceedings initiated under Regulations 43 and 45 and no time limit is prescribed for initiating the disciplinary proceedings under these Regulations and prayed for dismissal of the Writ Petition.*

42. *From the memorandum of allegations and articles of charges served on the petitioner, it is seen that the same is issued alleging that the petitioner committed certain acts of omission and commission, contravening Regulations 3(i), 3(iii) and 3(iv) of the Indian Overseas Bank Officer Employees' (Conduct) Regulations,1976, constituting misconduct punishable under Regulation 43, to be read with 45 of the Indian Overseas Bank Officer Employees' (Conduct) Regulations,1976. The misconduct alleged, took place on 30.04.2014, i.e., before the petitioner retired.*

43. Regulations 43, 45 and 48 are extracted hereunder for easy reference to decide whether the impugned disciplinary proceedings is within the time or barred by limitation.

> ***"43. Withholding or withdrawal of pension:—***
>
> *The Competent Authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or criminal breach of trust or forgery or acting fraudulently or is found guilty of grave misconduct:*
>
> *provided that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the minimum pension per mensem payable under these regulations*
>
> ***45. Pensioner guilty of grave misconduct-***
>
> *In a case not falling under regulation 44 if the Competent Authority considers that the pensioner is a prima face guilty of grave misconduct, it shall, before passing an order, follow the procedure specified in the Indian Overseas Bank Officer Employees' (Discipline and Appeal) Regulation, 1976 or in Settlement as the case may be.*
>
> ***48. Recovery of Pecuniary loss caused to the Bank:—***

(1) The Competent Authority may withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, and order recovery from pension of the whole or part of any pecuniary loss caused to the Bank if in any departmental or judical proceedings the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service : provided that the Board shall be consulted before any final orders are passed : provided further that departmental proceedings, if instituted while the employee was in service, shall, after the retirement of the employee, be deemed to be proceedings under these regulations and shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee had continued in service:

(2) No departmental proceedings, if not initiated while the employee was in service, shall be instituted in respect of an event which took place more than four years before such institution : provided that the disciplinary proceedings so instituted shall be in accordance with the procedure applicable to disciplinary proceedings in relation to the employee during the period of his service.

3) Where the Competent Authority orders recovery of pecuniary loss from the pension, the recovery shall not ordinarily be made at rate exceeding one-third of pension admissible on the date of retirement of the employee : provided that where a part of pension is withheld or withdrawn, the amount of pension drawn by a pensioner shall not be less than the minimum pension payable under these regulations"

44. *It is the contention of the learned counsel appearing for the respondents that Regulation 48 (2) applies only to Regulation 48 and does not apply to Regulations 43 and 45. According to learned counsel appearing for respondents, the said two Regulations relate to withholding or withdrawal of pension, while Regulation 48 relates to recovery of loss caused by the pensioner to the Bank. In view of the same, Regulation 48 (2) does not apply to Regulations 43 and 45. This contention is not acceptable, as Regulation 48 also empowers the respondents to withhold or withdraw the pension and in addition to the same, order recovery from the pension of the whole or part of any pecuniary loss caused to the Bank. Regulation 48(2) starts with "No departmental proceedings". A reading of Regulation 48 (2) shows that it relates to all departmental proceedings and is not restricted to Regulation 48 only. All the three Regulations along with*

Regulation starting from 42, are in chapter IX General Conditions. In view of the arrangement of said Regulations under the heading 'General Regulations', all the Regulations, especially Regulations 43 & 45 are to be read in conjunction with Regulation 48, especially 48(2).

45. *Identical Regulations 43, 45 and 48 of Punjab & Sind Bank and identical issue of limitation came up for consideration before the Hon'ble Delhi High Court in W.P.(C). Nos. 6382 of 2015 and etc., and batch. The Hon'ble Delhi High Court considering Regulations 43, 45 and 48 and judgments of the Hon'ble Apex Court, held that Regulations 43 and 45 have to be read in conjunction with Regulation 48 and also held that Regulation is not specific for recovery of pecuniary loss and it contemplates withholding or withdrawal of pension or part thereof, whether permanently or for a specific period. Regulations 43, 45 and 48 of the respondents' Regulations are identical, as the said Regulations of Punjab & Sind Bank. The Hon'ble Delhi High Court held that petitioners have claimed that charge sheet issued are without jurisdiction and not permitted under the Rules, which goes to the root of maintainability of the charge sheet in violation of Regulation and therefore, the Writ Petitions were maintainable. After elaborately considering the Regulations and judgments, the Hon'ble Delhi High Court quashed the charge sheet issued to the* *petitioners therein. The reasoning of the Hon'ble Delhi High Court is squarely applicable to the facts of the present case. The disciplinary proceedings is initiated for an 'event' that happened before 30.04.2014. The charge memo has been served to the petitioner on 14.05.2018, after four years of the 'event', the same is barred by limitation, as per the Regulation 48(2), and without jurisdiction.*

46. *The learned counsel appearing for the respondents referring to the judgment of the Hon'ble Apex Court reported in (2016) 9 SCC 20, referred to above, submitted that even if the disciplinary proceedings initiated is not maintainable, the respondents may be permitted to proceed with the disciplinary proceedings as the charges leveled against the petitioner are serious and grave in nature. The Hon'ble Apex Court held that memo of charges dated 22.08.2008 and 16.10.2009 were clearly beyond the period of four years and quashing the same, permitted the disciplinary authority to continue the disciplinary proceedings and conclude the same within the stipulated time. The Hon'ble Apex Court has granted such permission, exercising the power under Article 147 of the Constitution of India. This Court has no such power and cannot permit the respondents to continue the disciplinary proceedings.*

47. For the above reasons, the Writ Petition is maintainable in this Court and the disciplinary proceedings impugned in the present Writ Petition is barred by limitation, not maintainable and without jurisdiction.

48. For the above reason, this Writ Petition stands allowed. Consequently, the Miscellaneous Petitions are closed. No costs."

As the respondents had initiated disciplinary proceedings against the petitioner by issuing the charge sheet in respect of the event that has been taken before four years, the charges are barred by limitation and the respondents lack jurisdiction.

17. In view of the above stated reasons, this writ petition is allowed and the order passed by the second respondent in ZO/DA : GM(BARP)-ZO: VIG : 9297 & 9656 : 509 : 2019-2020 dated 01.08.2019 is set aside. Consequently, the connected Miscellaneous Petition is closed. No costs.

27-03-2025

Index:Yes/No
Speaking/Non-speaking order
Neutral Citation:Yes/No
Maya

To

1.The Chairman - Cum - Managing Director,
Indian Overseas Bank, Central Office, 763, Anna Salai,
Chennai - 600002

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