

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,
TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH

WA No. 20(AP) OF 2011

Shri Boa Penji
Son of late Boa Topuk
Resident of P Sector
Itanagar
District – Papum Pare(AP)

.....*Appellant/ Writ Petitioner*

- Versus -

1. **State Bank of India**, represented by the **Assistant General Manager**, Regional Office, **Itanagar**.
2. **Assistant General Manager(Administration)**, State Bank of India, Zonal Office, Bhangagarh, Guwahati-5 (**Disciplinary Authority**).
3. **Deputy General Manager(O & C), NW-1**, State Bank of India, Local Head Office, Dispur, Guwahati-6(**Appellate Authority**).

.....*Respondents*

Advocates for the writ appellant :- Mr. K. N. Choudhury, Sr. Advocate
Mr. A. Hazarika

Advocates for the respondents :- Mr. S. S. Sarma, Sr. Advocate
Mrs. S. Nag

B E F O R E
THE HON'BLE MR. JUSTICE K. MERUNO
THE HON'BLE MR. JUSTICE C. R. SARMA

Date of hearing :- **28.02.2012**
Date of Judgment & order :- **07.03.2012**

JUDGMENT AND ORDER(CAV)

(By Meruno, J.)

Heard Mr. K. N. Choudhury, learned senior counsel, assisted by Mr. A. Hazarika, learned counsel appearing for the writ appellant and Mr. S. S. Sarma, learned senior counsel, assisted by Mrs. Suparna Nag, learned counsel, for the respondents State Bank of India.

2. In support of his case, Mr. K. N. Choudhury, learned senior counsel, has relied upon the following decisions of the Apex Court, as reported in (1987) 4 SCC 611, (1993) 3 SCC 631, and AIR 1971 SC 1447. However, Mr. S. S. Sarma, learned senior counsel, has not placed any decision in support of his case before this Court.

3. The brief facts before the learned Single Judge in WP(c) 256(AP)2010 has been narrated in Paragraph No. 3 of the impugned judgment and order dated 11.03.2011 and the same is detailed hereinbelow for ready reference :

“3. The relevant facts leading to filing of this writ petition are that the petitioner at the relevant time, was serving as Deputy Head Cashier at Itanagar Brach of the State Bank of India. A charge sheet dated 05.03.2001 was served upon the petitioner levelling certain allegations against him. He submitted reply on 31.03.2001 denying all the charges. The disciplinary authority found the reply unsatisfactory and decided to hold enquiry against him and appointed an Enquiry Officer on 23.10.2001 and also one Presenting Officer on 31.01.2003. On conclusion of the enquiry, the Enquiry Officer submitted his report to the disciplinary authority but the same was not furnished to the petitioner. However, he could gather that none of the allegations have been found proved and he was exonerated of the charges. The disciplinary authority vide order dated 17.10.2003 directed to hold de novo enquiry against him on the same charges. At the same time, the petitioner was transferred to Guwahati. The petitioner filed a writ petition before this Court which was originally registered as WP(c) No. 9143/2003 at the Principal Seat and renumbered as WP(c) No. 387(AP)2003 pm transfer at Itanagar Bench, challenging the legality and justification for holding a de novo enquiry. The said writ petition was dismissed vide judgment and order dated 03.06.2005 with direction that the Bank shall complete the enquiry within 3(three) months from the date of receipt of a

certified copy of the order. Against the said judgment and order, the petitioner preferred a writ appeal, being W.A. No. 51(AP)2006, which was disposed of vide judgment and order dated 26.04.2007 holding that the de novo enquiry was not appropriate and directing the disciplinary authority to hold further enquiry by permitting the parties to adduce additional evidence, both oral and documentary, as may be relevant to prove or disprove the charges.

Thereafter, the disciplinary authority appointed a new Enquiry Officer who was on the verge of retirement. The regular hearing of the fresh enquiry commenced from 28.05.2009 and the said new Enquiry Officer submitted his enquiry report on 27.06.2009 holding 6 out of 9 charges as proved against the petitioner. On being furnished a copy of the enquiry report, the petitioner submitted representation dated 11.08.2009 against the findings of the Enquiry Officer. The enquiry authority passed an order on 10.09.2009 against the petitioner imposing penalty/punishment of removal from service. He submitted an appeal on 05.10.2009 before the appellate authority against the penalty imposed by the disciplinary authority but the same was rejected by the appellate authority vide order dated 10.03.2009.”

4. We have heard the learned senior counsels, above noted, assisted by their juniors, appearing on behalf of their respective parties, at length, perused the cited cases, documents as well as judgment & order put under challenge.

5. After adequately hearing the parties and perusal of the documents, noted above, we are of the considered view that since the limited issue to be considered by us, as involved in this writ appeal, is the question of appointment of a new Enquiry Officer, whether the appointment of the new Enquiry Officer is within the rules and regulations of the respondent Bank and whether the appointment of the new Enquiry Officer has been substantially explained by sufficient reasons, therefore, we are not burdening this judgment by narrating the lengthy facts leading to the filing of the present writ appeal. However, to answer the issue with regard to all the aspects related to the new Enquiry Officer, as stated above, we have minutely perused the affidavit-in-opposition filed by the respondents State Bank of India in the writ petition placed before the learned Single Judge.

6. The stand of the respondent Bank on the above issue has been stated in Paragraph No. 15 of their affidavit-in-opposition filed in the connected writ petition, and for better appreciation of all, we, hereunder, quote the Paragraph No. 15 :

“15. That as regards the averments made in Paragraph 10, I do not dispute the averments made therein but would like to state here that the judgment and order dated 26.4.2007 passed by this Hon’ble Court in WA No. 51 AP?2005 nowhere put any embargo on the bank not to appoint a new enquiry officer to hold the further enquiry and hence the contention of the petitioner against his appointment are without any basis.”

7. In order to further appreciate the stand of the respondent Bank, we have perused the provisions made under **PROCEDURE FOR TAKING DISCIPLINARY ACTION : AWARD STAFF**, the copy of which has been produced and relied upon by Mr. K. N. Choudhury, learned Senior counsel appearing for the writ appellant. The relevant portion which is embodied in Paragraph No. 23.7.2, is reproduced hereinbelow :

“23.7.2 E.O. should not be changed after the commencement of inquiry

Once the enquiry has commenced i.e. witness, etc., have been produced and examined, an Enquiry Officer should not be changed as it is desirable that an authority who hears the arguments should decide the case. Allegation of bias or prejudice, if any, received against the Enquiry Officer, is based on facts and reasonable grounds, should be properly examined by the disciplinary authority and reasons for continuing the existing officer or changing him should be recorded.”

8. From a bare perusal of this document, which is a document of the respondent Bank, it is clearly seen that the above provision should be followed strictly by the respondent Bank. While conducting the disciplinary proceedings against the erring Bank employee, in question, we have noted that the Enquiry Officer could not have been changed after commencement of the Enquiry Officer. In the said Paragraph under reference, it is further stipulated that the reasons for continuing the existing Officer or changing him should be recorded. Now, coming back to Paragraph No. 15 of the affidavit-in-opposition filed by the respondent Bank in the connected writ petition, it is to be seen whether such

reasons have been explained or recorded. In regard to that aspect of the matter, it is seen that the only ground taken by the Respondent Bank is that the judgment and order dated 26.04.2007 passed by this Court passed in WA No. 51/AP 2005, nowhere put any embargo on the Bank not to appoint a new Enquiry Officer to hold further enquiry.

9. Considering the statement of the respondent Bank, as contained in the said Paragraph No. 15, we are of the considered view that it is not whether this High Court put any embargo or not in its judgment and order but the Rules say and thus prescribed under the Rules as contained in Paragraph 23.7.2 that the procedure has to be followed. Therefore, the respondent Bank has to follow its own rules and regulations strictly and rigorously. However, it is clearly seen that though the Enquiry Officer has been changed but no reasons, whatsoever, have been recorded except the reason that this Court has not put any embargo not to appoint a new Enquiry Officer. The law requires that the respondent Bank must strictly and rigorously follow its own rules and regulations while conducting the disciplinary proceedings. Furthermore, it has also been held in a catena of decisions of the Apex Court as well as this Court that rules and regulations are required to be followed and not violated. The Apex Court in the case reported in **AIR 1971 SC 1447** has clearly held that if there is some defect in inquiry conducted by the Inquiry Officer, the disciplinary authority can direct the Inquiry Officer to conduct further inquiries in respect of that matter but it cannot direct a fresh inquiry to be conducted by some other officer.

10. We have also further observed that the learned Single Judge in its judgment and order put under challenge in this writ appeal, did not discuss this vital issue which goes to the very root of the dispute between the appellant and the respondent Bank. We, therefore, fully endorse our agreement with the said decision of the Apex Court as rendered in **AIR 1971 SC 1447** which has been relied by the Mr. Choudhury, learned senior counsel, for the appellant.

11. In view of what have been discussed above, we have no other alternative but to interfere with the impugned judgment and order dated 11.03.2011 passed by the learned Single Judge in WP(c) 256(AP)2010 and accordingly, the said impugned judgment and order, is hereby quashed and set aside.

12. In view of our arriving at the above conclusion, the relief(s) claimed by the writ appellant is hereby allowed. As a result, the inquiry report dated 27.06.2009, order of penalty dated 10.09.2009 and order of the appellate authority dated 10.03.2010, are hereby quashed and set aside.

13. Accordingly, the respondent Bank is hereby directed to reinstate the present writ appellant, forthwith, with all consequential benefits particularly with regard to back wages.

14. With the above directions, this writ appeal stands allowed and it shall accordingly stand disposed of.

15. No order as to costs.

JUDGE

JUDGE

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