

WA(MD)No.932 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 28.11.2024

Pronounced on : 28.03.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MR.JUSTICE P.VADAMALAI**

**WA(MD)No.932 of 2021
and
C.M.P.(MD)No.4238 of 2021**

1.The General Manager &
Reviewing Authority,
Canara Bank, Human Resources Wing,
Head Office, 112, J.C.Road,
Bangalore – 2.

2.The Deputy General Manager &
Appellate Authority,
Human Resources Wing,
Head Office, 112, J.C.Road,
Bangalore – 2.

3.The Assistant General Manager &
Disciplinary Authority,
Circle Office, East Veli Street,
Madurai – 625 001.

... Appellants /
Respondents

v.

S.V.Mothilal,
Senior Manager (Marketing)
(Under dismissal),
Canara Bank, Madurai – 622 001.

...Respondent /
Petitioner



WA(MD)No.932 of 2021

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order passed by the learned Judge in WP(MD)No.1404 of 2015 dated 01.12.2020 and dismiss the writ petition.

For Appellants : Mr.N.Dilip Kumar

For Respondent : Mr.M.E.Ilango

ORDER

(Order of the Court was made by G.R.SWAMINATHAN, J.)

A disciplinary proceeding should not resemble a point to point bullet train journey. A charge memo need not necessarily culminate in punishment. The delinquent employee stands the chance of being exonerated also. The proceeding should therefore be conducted in a manner that is pregnant with the possibility of “two roads diverging in the yellow woods”. There must be halting stations. And the halts should be meaningful and not for the sake of it. The process need not be necessarily slow. It can very well be carried on with reasonable speed and despatch. The Judge carrying out the task of judicial review must get the feeling that the entire process was permeated with fairness and that the end result was not predetermined.



WA(MD)No.932 of 2021

2.The order passed by the disciplinary authority which was affirmed by the appellate and reviewing authorities would be tested on the aforesaid touchstone. Now let us move on to the facts.

3.The writ petitioner joined Canara Bank as Agricultural Extension Officer in the year 1982. Over the years, he was granted promotions. In the year 2007, he was working as Senior Manager in the grade of Scale III officer. Between August 2007 and July 2009, he was posted as Branch Manager, Madurai Pudhur Branch of the bank. During the said period, the petitioner has sanctioned a large number of loans in favour of a number of self help groups. He was transferred on 27.07.2009. On 13.07.2013, charge memo was issued to the petitioner. It contained as many as seven articles of charge. It was specifically alleged that on account of the lapses on the part of the writ petitioner, the bank stood exposed to a possible financial loss of Rs.1.66 crores.

4.Even though the petitioner was called upon to offer his explanation within fifteen days, without waiting for the

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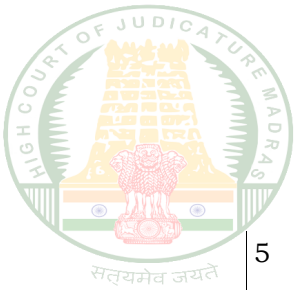
WA(MD)No.932 of 2021

petitioner's explanation, enquiry was commenced on 17.07.2013.

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Enquiry was completed on 18.07.2013. The petitioner's defence representative submitted his brief on 20.07.2013. The enquiry officer submitted his report on 23.07.2013 containing the following findings :

Sl No.	Issues	Findings
1	LOAN PROCEEDS NOT RECEIVED BY SHG AND SHGS HAVE NO KNOWLEDGE OF THE LOANS GRANTED TO THEM	GUILTY
2	IN RESPECT OF THE FOLLOWING GROUPS THE FULL LOAN AMOUNT WAS NOT RECEIVED BY THE GROUPS, ONLY PART AMOUNT WAS RECEIVED BY THE GROUPS THE LOAN AMOUNT WAS NOT DIRECTLY DISBURSED TO THE GROUPS BUT THE SAME WERE DISBURSED THROUGH THE NGO	NOT PROVED
3	SHG LOANS WERE GRANTED ON THE SAME DAY OF GROUP FORMATION. SIX MONTHS SUCCESSFUL FUNCTIONING OF THE GROUP WAS NOT ENSURED; FURTHER THE FOLLOWING DISCREPENCIES WERE OBSERVED IN SANCTION OF LOANS TO SHGS:- (1) Maintenance of records by groups was not ensured by the branch in all the above cases at the time of sanction of loans (2) Inter-se agreement was not witnessed by any of the branch official (3) CR copies were not submitted to CO/RO for review (4) Homogeneity of the groups were not ensured	PARTLY GUILTY Guilty Partly guilty Partly guilty Guilty
4	SHG LOANS WERE SANCTIONED WITHOUT COMPLYING GUIDELINES PERTAINING TO KYC NORMS, SAVINGS-LENDING RATIO AND RATING OF THE GROUP	Guilty



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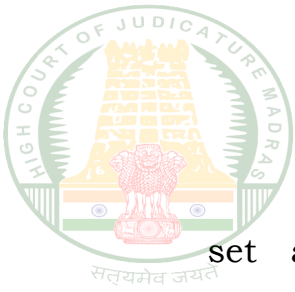


WA(MD)No.932 of 2021

5	PAYMENT OF COMMISSION OUT OF SHG LOANS TO GET DEPOSIT'S THROUGH AGENTS (Quantum specified in the charge sheet towards commission)	Guilty Not proved
6	Illegal Gratification	Not guilty
7	Loans to close relatives of employee	Not guilty
8	CSO HAS GRANTED 55 SHG LOANS THROUGH NGO M/S.PEACE TRUST FRAUDULENTLY	PARTLY GUILTY
9	Documents were not obtained in the presence of branch officials	GUILTY
10	Withdrawal order forms were not issued to the Authorised Signatories	Not Guilty
11	Loans sanctioned during 2007-09 and 2010-11 by the CSO without ensuring laid down norms	Partly Guilty
12	Financial Loss	Guilty
13	Honesty, integrity, devotion and diligence	Guilty

On the same day, the petitioner's further representation was also obtained. Thereafter, the disciplinary authority passed an order on 27.07.2013 agreeing with the findings of the enquiry officer and imposing the punishment of dismissal from service.

5.Aggrieved by the same, the petitioner filed appeal before the appellate authority. The appellate authority dismissed the appeal vide order dated 05.02.2014. The appellant sought review of the said order. The reviewing authority vide order dated 03.09.2014 declined to interfere. Challenging these orders, the petitioner filed WP(MD)No.1404 of 2015. The learned Single Judge vide order dated 01.12.2020 allowed the writ petition and



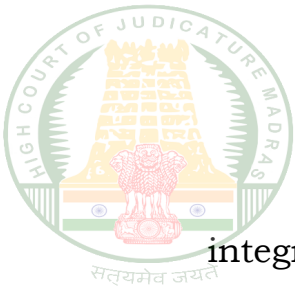
WA(MD)No.932 of 2021

set aside all the orders impugned in the writ petition.

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Challenging the order passed by the learned Single Judge, this writ appeal has been filed by the bank management.

6.The learned counsel appearing for the bank reiterated all the contentions set out in the memorandum of grounds of appeal. He filed written arguments and took me through its contents. The core argument of the learned counsel for the appellant is that the in-house investigation reports clearly revealed that the appellant as the sanctioning authority did not adhere to the procedure laid down in the bank norms. As a result of the improper, irregular and fraudulent loan disbursements, the bank had been exposed to huge financial loss. In these circumstances, the management was justified in imposing the punishment of dismissal from service. Relying on a catena of decisions, the learned standing counsel for the bank argued that the scope for interference in such matters is limited. He drew our attention to the decision reported in **(2003) 4 SCC 364 (P.C.Kakkar vs. UOI)** wherein it was held that a manager in a bank is required to possess higher standards of honesty and



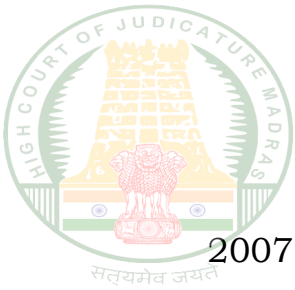
WA(MD)No.932 of 2021

WEB COPY

integrity and any interference with the quantum of punishment would amount to misplaced sympathy. The learned counsel for the appellant argued that none of the reasons set out by the learned Single Judge can hold good. He pointedly submitted that the writ court cannot assume the function of a fact finder or decide the quantum of punishment to be awarded and that such findings were within the jurisdiction of the employer by relying on the decision reported in (1995) 6 SCC 749 B.C. Chaturvedi v Union of India. He placed reliance on a catena of decisions in support of his contentions and called upon this Court to set aside the impugned order and grant relief as prayed for.

7.Per contra, the learned counsel for the respondent submitted that the learned Single Judge was justified in interfering with the punishment imposed on the petitioner. He called upon this Court to sustain the same and dismiss the appeal.

8.We carefully considered the rival contentions and went through the materials on record. It is not in dispute that the lapses attributed to the petitioner took place between August



WA(MD)No.932 of 2021

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2007 and July 2009. Admittedly, the petitioner was transferred from Pudhur Branch on 27.07.2009. However, the charge memo was issued only on 13.07.2013. It was not preceded by any other notice. In other words, the petitioner was slapped with the accusations only vide order dated 13.07.2013. He was dismissed on 27.07.2013. It is true that all the necessary motions were carried through. Charge memo was issued. Enquiry officer was appointed. Documents were marked. Witnesses were examined. Written submissions from both sides were obtained. Enquiry report was submitted. Further representation on the enquiry report was also submitted and the dismissal order came to be passed.

9. We take judicial notice of the fact that disciplinary proceedings of this nature would normally take at least a few months to conclude. 'Justice hurried is justice buried' is a well known adage. It is inconceivable that the entire proceedings could have been concluded in a fair manner within a period of two weeks. The charge memo dated 13.07.2013 opens thus :



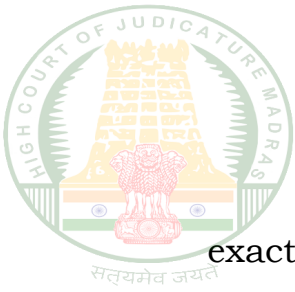
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WA(MD)No.932 of 2021

“WHEREAS it is proposed to hold an enquiry against you under Regulation 6 of the Canara Bank Officer Employee's (Discipline and Appeal) Regulations, 1976 in respect of the Articles of Charge and Statement of Imputations of Misconduct contained hereunder ; You are hereby required to submit your explanation within fifteen days of receipt of this charge sheet ; a written statement of defence, setting forth your defence and stating cause as to why departmental proceedings should not be initiated against you.”

In other words, the petitioner was given fifteen days to offer his explanation. In fact, the the aforesaid recital is more in the nature of show cause. If the explanation given by the delinquent had been found to be satisfactory, further proceedings would have even been dropped. But, without even waiting for his explanation, the enquiry officer came to be appointed and the enquiry commenced on 17.07.2013. The transactions as already mentioned had taken place between August 2007 to July 2009 and the petitioner would not even have had sufficient time to peruse the documents. In the charge memo, there is a reference to only three documents ; it was proposed to examine three witnesses. But in the enquiry, as many as 96 documents were marked and 17 witnesses were examined. This was done in



WA(MD)No.932 of 2021

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exactly 2 days ie., 17.07.2013 and 18.07.2013. The enquiry authority had submitted his report in a record time ie., on 23.07.2013. Normally, the enquiry report will be submitted to the disciplinary authority. After going through the same, the disciplinary authority may concur with the findings of the enquiry officer or disagree or dissent partly. Even without doing so, the petitioner's reply was obtained immediately. It is not known as to how the enquiry report was furnished to the delinquent. On 27.07.2013 itself, the dismissal order came to be passed. The Hon'ble Supreme Court in the decision reported in **(2024) 1 SCC 632 (Aureliano Fernandes v. State of Goa)** had used the expression ***“whirlwind proceedings”*** since the entire process had been wrapped up by the authority concerned in flat 39 days. It was further noted that the undue haste demonstrated by the Committee for bringing the enquiry to a closure, cannot justify curtailment of the right of the appellant to a fair hearing. In the case on hand, the entire proceedings were concluded within two weeks. The expression ***“whirlwind proceedings”*** used by the Hon'ble Supreme Court would aptly apply to the case on hand also.



WA(MD)No.932 of 2021

WEB COPY

10.From the sequence of events, we are led to conclude that some sort of assurance would have been given to the petitioner that if he cooperates, he would be let off lightly. Otherwise, no delinquent would willingly participate in the enquiry proceedings even without submitting his defence statement. The fact that the reply was submitted to the enquiry officer immediately also goes to show that some sort of persuasion was exercised on the delinquent. The writ petitioner has been led like a lamb to be mercilessly slaughtered. We are of the view that the principle of estoppel by conduct cannot be invoked against the delinquent. When it comes to adherence to principles of procedural fairness, we would expect the employer to be an exemplar. They cannot take advantage of the acquiescence on the part of the employee. By no stretch of imagination can the process that had taken place in this case held to be fair. On this sole ground, interference is justified.

11.That apart, the learned Single Judge had pointed out that the bar of limitation would also apply. The management had issued Circular No.72 of 2012 dated 10.03.2022 with regard to staff accountability. Clause 2.14 and 5 are as follows :



WA(MD)No.932 of 2021

“2.14 Loan Failures and Accountability:

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When loan failures occur, as they at times do, it becomes necessary for the Bank to examine the causes for the failure and record them in its institutional memory so that such failures can be avoided in future. Only if such failures are the result of direct acts or omissions on the part of the staff, the accountability aspect has to be examined. Wherever it is found that staff lapses by way of acts or omissions have not contributed to the failure of the credit facility, the mere presence of such lapses should not become a cause for proceeding against the employee concerned.

The mere presence of procedural lapses should also not become a cause for proceeding against the employee concerned in a failed loan account where adequate realizable securities are available and /or in accounts which are closed/ fully recovered/ standard, unless evidence of fraud/malafide emerges.”

In the case on hand, only procedural lapses have been held to be proved. There is nothing on record to show that the petitioner had gained any undue advantage. There is considerable force in the contention of the learned counsel for the employee that as a senior manager of the bank, he was more a counter signing

12/15



WA(MD)No.932 of 2021

WEB COPY

authority and that he did not conduct any field inspection. Since during the relevant time, there was considerable pressure to grant loans to self help groups, no mala fides can be attributed to the petitioner. Between the two dates ie., when the petitioner was transferred from Pudhur Branch and the date when the charge memo was issued, two successive regular inspections had taken place. Full four years had lapsed between the date of occurrence and the date of issuance of charge memo. The petitioner was transferred from Pudhur Branch on 27.07.2009 and the charge memo was issued on 13.07.2013. Any irregularity that took place prior to 13.07.2013 cannot form part of the disciplinary action. That is why, the learned Single Judge held that the aforesaid clause 5.2 stood in the way of initiation of departmental action. We find no reason to interfere with the impugned order allowing the writ petition.

12.We went through the order passed by the appellate authority as well as the order of the reviewing authority. Both these orders have not at all adverted to the pointed defences raised by the writ petitioner. That is why, the learned Single Judge chose to characterise them as non-speaking.



WA(MD)No.932 of 2021

WEB COPY

13.For the aforesaid three reasons, namely, gross violation of principles of procedural fairness, the disciplinary action being hit by clause 5.2 and the non-speaking nature of the orders, we decline to interfere with the order of the learned Single Judge. This writ appeal is dismissed. No costs. Connected miscellaneous petition is closed.

(G.R.S., J.) & (P.V.M, J.)

28.03.2025

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
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To

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14/15



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WA(MD)No.932 of 2021

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