

W.P.(MD) No.3047 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD)No.3047 of 2022
and
WMP(MD)Nos.2662 & 2663 of 2022

Manimaran

... Petitioner

Vs.

1.The Chief General Manager /
Reviewing Authority,
Canara Bank,
Industrial Relations Section,
Human Resources Wing,
112, JC Road, Head Office,
Bengaluru.

2.The Deputy General Manager / Appellate Authority,
Canara Bank,
DA Cell,
Circle Office,
Madurai.

3.The Assistant General Manager /
Disciplinary Authority,
Human Resources Management Section,
Circle Office,
Madurai

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records pertaining to the impugned show cause notice dated 25.01.2022 in Ref.No.HRW IRS DP MDUC 354 2022 issued by the 1st respondent and quash the same as illegal.

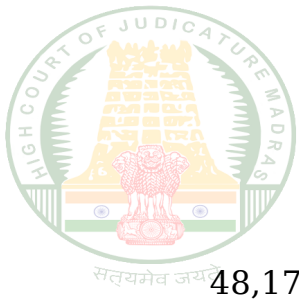
For Petitioner :Ms.Kasthuri

For Respondents : Mr.N.Dilipkumar

ORDER

The show cause notice, dated 25.01.2022, issued by the Reviewing Authority of the Canara Bank, is under challenge in the present Writ Petition.

2. The petitioner was appointed as a Clerk in the respondent Bank in the year 1996 and he was promoted as Scale-I Officer and further promoted to the post of Scale-II Officer namely, Manager of the Branch. Disciplinary proceedings were initiated against the writ petitioner for certain irregularities in financial matters. Charge Memorandum was issued and an enquiry was conducted. Based on the enquiry report, the punishment of reduction of a lower grade i.e., from MMG Scale-II to JMG Scale-I, by fixing his basic pay at Rs.



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48,170/- was imposed in order dated 26.07.2021. The appellate authority also confirmed the punishment imposed by the original authority

3. Under these circumstances, the 1st Respondent / Reviewing Authority, issued the show-cause notice in the impugned proceedings, dated 25.01.2022, on the ground that the lapses / charges held as proved against the petitioner clearly evidences *mala fide* intention on the part of the petitioner and touches upon his honesty and integrity. Further it is stated that the petitioner caused financial loss of Rs.72.94 lacs to the Bank.

4. The show cause notice further reveals that the disciplinary authority, based on the circumstances of the case, had imposed the punishment of reduction to a lower grade i.e., from MMG Scale-II to JMG Scale-I by fixing his basic pay at Rs.48,170/- vide order dated 26.07.2021. Accordingly, the Reviewing Authority formed an opinion that the punishment imposed by the Disciplinary Authority does not commensurate with the gravity of the charges. Accordingly, the Authority thought fit to review the punishment and issued the impugned show cause notice.



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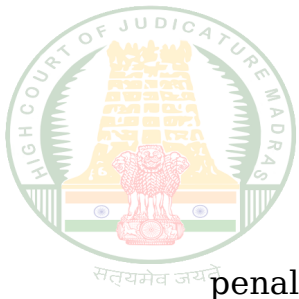
5. The learned counsel for the petitioner mainly contended that the Reviewing Authority has no power to issue the show-cause notice in violation of the power of review conferred under Clause 18 of the Canara Bank Officer Employees (Discipline & Appeal) Regulation 1976. The power of review shall be exercised only when a new material or evidence, which could not be produced or was not available at the time of passing the orders under review and which has the effect of changing the nature of the case, has come or has been brought to the notice and pass such orders thereon, as it may deem fit. Relying on the said Regulation, the learned counsel for the petitioner reiterated that there is absolutely no materials found in the impugned show-cause notice. The materials adjudicated by the disciplinary authority is reproduced in the show-cause notice and therefore, the show cause notice is liable to be set aside. The learned counsel for the petitioner made a submission that the Reviewing Authority proposed to impose the major penalty. Therefore, there must be a distinguishable new material for the purpose of invoking the power of review and thus, the writ petition is to be considered.



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6. The Regulation is to be read cogently and also the intent of the regulation is also to be considered by the Court while dealing with the show cause notice. No writ against the show cause notice needs to be entertained in a routine manner. No doubt, a writ against the show-cause notice may be entertained, if the point of jurisdiction is raised by the petitioner. In the present case, the petitioner relies on the power of review and contended that there is no new material available on record, which is indicated in the impugned show cause notice and therefore, the Reviewing Authority has no power to review the order, which was already confirmed by the Appellate Authority.

7.Regulation 18 unambiguously stipulates that the Reviewing Authority may at any time within six months from the date of final order, review the order when any new material or evidence which could not be produced or was not available at the time of passing the order under review. There is a proviso clause and the second proviso indicates that “if the Reviewing Authority decides to enhance the punishment, but an enquiry has already been held in accordance with the provisions of Regulation 6, the Reviewing Authority shall give show cause notice to the officer employee as to why the enhanced



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penalty should not be imposed upon him and shall pass an order after taking into account the representation, if any, submitted by the officer employee.” Therefore, the Reviewing Authority has got powers to enhance the penalty and there is no ambiguity. As far as the availability of new material or evidence, which could not be produced or was not available at the time of passing order, this Court has to go into the show-cause impugned, dated 25.01.2022.

8. The show cause notice reveals that the Reviewing Authority considered the matter in its entirety and 11 lapses were observed in respect of loans sanctioned at Mukkannamalaipatti branch and also at Thirumayam branch. Further, the show cause notice proceeds that “ The charges held as proved against you clearly evidences *malafide* intentions on your part and touches upon your honesty and integrity. By your above acts you have caused a financial loss of Rs.72.94 lacs to the bank”. The Reviewing Authority considered the fact that the disciplinary authority has imposed the punishment not taken into consideration regarding certain records and imposed minor penalty. While reviewing the order, the appellate authority found that the financial loss caused to Rs.72.94 lack to the Bank, the disciplinary authority has not given any findings regarding the recovery of financial loss from the delinquent officer. Further, the



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Reviewing Authority found that the proved charges establishes the *malafide* intentions on the part of the petitioner. Thus, the Reviewing Authority formed an opinion that the *malafide* intention of the officer was not taken into consideration, while inflicting the minor punishment.

9. There are two aspects, which are to be considered in such circumstances. The disciplinary authority considered certain materials and the Reviewing Authority if found that certain intricacies are vital aspect involved in that documents are not considered by the Disciplinary Authority, then, it is to be construed that such matters were not brought to the notice or not available or not considered by the Disciplinary Authority. Such materials are to be treated as new materials for the purpose of reviewing the order. The power of Reviewing Authority is not intended for not mechanical exercise. The power of Reviewing Authority is to ensure that there is a clear application of mind. The nature of the charges whether proved or not; and the proved charges are in commensuration with the gravity of the charges or not; whether the disciplinary authority has taken all the aspects into consideration or not and other factors, which are relevant to be taken into consideration while reviewing the order.



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10. The very interpretation of the petitioner is that there must be a new material to indicate that there is new file or new document. The new material includes the non-consideration of certain vital factors or intricacies involved in the charges. Such non-consideration is also a ground to review the order of the disciplinary authority and such intricacies or such factors involved in certain documents not considered by the disciplinary authority are also to be construed as a new material for the purpose of exercise the power of review.

11. The scope of the power of review under the rule cannot be narrowed down so as to form an opinion that the Reviewing Authority cannot have any power in the absence of any new material document. A new material document is one aspect of the matter and culling out new material from available document is another matter. In both circumstances, the power of review is exercisable and there cannot be any other opinion in this regard. In the event of not interpreting the power of review in an extended manner, then, the very purpose and object of the review will be defeated and the Reviewing Authority, being the Higher Authority, has been conferred



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with the power to consider the over all view along with all other available documents and the manner in which the Disciplinary Authority has taken a decision in consonance with the Service Regulation.

12. In the present case, the very fact that there is a financial loss of 72.94 lacs to the bank was noticed by the Reviewing Authority and the Reviewing Authority found that the charges held proved against the petitioner clearly evidences *malafide* intention on the part of the petitioner, touches upon his honesty and integrity, those aspects, which were not considered by the Disciplinary Authority are taken into consideration by the Reviewing Authority and thus there is no infirmity as such in respect of exercise power of review by the respondent for the purpose of issuing the show-cause notice.

13. Even such circumstances, the petitioner is at liberty to putforth all his grounds, including the ground of non-availability, no material or otherwise before the Reviewing Authority. This Court has interpreted the power of review only for the purpose of exercise of power by the Reviewing Authority and any discussion made on merits in this writ petition need not influence the Reviewing Authority while



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taking the final decision in the matter. In other words, the Reviewing Authority is directed not influenced by the factual findings made in the present order only for the limited purpose of interpreting the power of review under regulations. Thus, the Reviewing Authority must consider the explanations / objections, if any, submitted by the writ petitioner, on its own merits and based on the records available and uninfluenced by the observations made in this order with reference to certain facts, which is only for the limited purpose of tracing out the power of review under the Regulation and not for any other purpose, as expeditiously as possible. The petitioner is at liberty to submit additional explanations or objections, if any, within a period of one week from today.

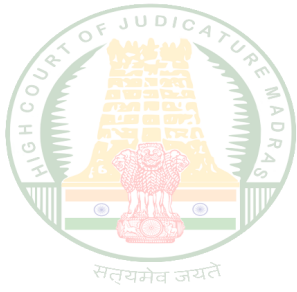
14. With these observations, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are also dismissed.

16.02.2022

Index : Yes / No
Internet : Yes / No

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S.M.SUBRAMANIAM, J.

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