

(1999) 02 KAR CK 0002
In the Karnataka High Court
Case No : Writ Petition No. 3305 of 1999

Shantharaju N.

APPELLANT

Vs

State Bank of Mysore and Another

RESPONDENT

Date of Decision : 03-02-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 2 LLJ 637

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : P.S. Rajagopal, for the Appellant;

Final Decision : Dismissed

Judgement

Tirath S. Thakur, J.—In Writ Petition No. 14631/1998, filed by the petitioner, a certiorari quashing the charge sheet issued to him and in the alternative for restraining the respondents from proceeding with the disciplinary enquiry pending disposal of criminal proceedings under investigation with the C.B.I, was prayed for. Justice BHARUKA before whom the said petition came for orders dismissed the same by his order dated June 22, 1998 on the ground that the prayers made were not tenable in law. A direction was however issued to the Disciplinary Authority to dispose of the representation if any made by the petitioner claiming a similar relief. The petitioner appears to have accordingly made a representation on -September 4, 1998 which was considered together with his earlier representation dated January 3, 1998 and rejected by the Disciplinary Authority's order dated November 23, 1998. The Authority was of the view that there was no justification for keeping in abeyance the disciplinary proceedings pending investigation by C.B.I., having regard to the fact that the subject matter of the charge sheet was different from the allegations being enquired into by the C.B.I.

2. Aggrieved by the order of the Disciplinary Authority, the petitioner has filed present writ petition in which the primary grievance made by Mr. Rajagopal,

counsel appearing for him is that the Disciplinary Authority should not have dubbed the delay in the initiation of the enquiry and promotion of the petitioner as irrelevant circumstances. It was contended by the learned counsel that the transaction which constituted the subject matter of the enquiry related to the period 1992-95 so that any enquiry initiated in January 1997 against the petitioner was belated and legally barred on that ground only. I find it difficult to accept that submission. The transaction in question is not in my opinion so far removed in point of time from the pending enquiry as to make any disciplinary action against the petitioner look unfair, or unjustified. The Disciplinary Authority was therefore, right in rejecting that contention although for different reasons.

3. Mr. Rajagopal next argued that since the petitioner had been promoted to the next higher post, the Bank was estopped from initiating any enquiry proceedings on the basis of any act of omission and/or commission while he held the lower post. There is no substance even in that submission. The fact that the petitioner is in due course of time promoted to a higher post does not earn any immunity for him against any disciplinary action should any such action be otherwise sustainable, in the facts and circumstances of the case. The promotion of the petitioner to the next higher post does not in fact have any direct co-relation with the right of the employer to initiate action should any misconduct on the part of the former come to the notice of the latter. There is no principle on which the petitioner can possibly extend the rule of estoppel against the employer in a situation like the present nor was one stated by Mr. Rajagopal before me. The promotion of the petitioner to the next higher post does not therefore, *pro facto* preclude the employer from proceeding against the petitioner.

4. It was lastly contended by Mr. Rajagopal that the petitioner had been on the basis of the very same transaction asked to submit an explanation and had been cautioned to be careful. This, according to the learned counsel, amounted to a final disposal of the charges against the petitioner rendering any further enquiry into the matter not only unnecessary but impermissible in law. This argument must also in my opinion fail for more than one reason. In the first place, the letter relied upon by the petitioner cannot be related to the allegations that now constitute the basis of the charge sheet issued to him, nor has any material been produced to show the caution administered to the petitioner related to the very transaction on the basis of which the present enquiry has been commenced. That apart, even if that were to be so, the fact that the petitioner had been only cautioned does not mean that he had been properly proceeded against in accordance with the rules and punished. The caution administered to the petitioner is not one of the prescribed punishments under the Service Regulations governing the petitioner. The initiation and continuance of the Disciplinary Proceedings therefore, does not amount to double jeopardy for the petitioner to warrant any interference.

5. Before parting, I cannot help observing that the repeated attempts wherein the petitioner is making to somehow stop the proceedings against him smacks of

a desperate endeavour on his part to prevent the matter from reaching its logical end. The jurisdiction of this Court under Article 226 of the Constitution of India is wide but the same cannot be invoked by a delinquent official with the oblique motive of frustrating the enquiry proceedings. The jurisdiction cannot be invoked in cases where the order passed by the Disciplinary Authority does not materially affect the right of the petitioner to defend himself. Nor is it every possible irregularity: that the Disciplinary Authority has in the opinion of the delinquent official committed that would justify interference by this Court. That is because the petitioner has at the appropriate stage, the opportunity nay the right to question the findings of the Disciplinary Authority and the punishment orders passed on that basis. The temptation of rushing to the Court at the slightest provocation must therefore, be resisted, in the interest of a speedy conclusion of the proceedings.

In the result this petition fails and is dismissed.