
(2008) 09 GUJ CK 0012
In the Gujarat High Court

Case No : Letters Patent Appeal No. 198 of 2002 in Special Civil Application No. 11091 of 2001

T. Jaychandran

APPELLANT

Vs

Chairman and Others

RESPONDENT

Date of Decision : 26-09-2008

Acts Referred:

Citation : (2008) 3 GLH 788

Hon'ble Judges : R.R. Tripathi, J;K.M. Thaker, J

Bench : Division Bench

Advocate : C.J. Vins 1, for the Appellant; A.Y. Kogje for Respondent(s) 1 and Rule Served for Respondents(s) 2 - 3, for the Respondent

Final Decision : Allowed

Judgement

Ravi R. Tripathi, J.—The appellant-original petitioner is before this Court being aggrieved by judgment and order dated 18.3.2002 passed by the learned Single Judge rejecting the petition and discharging the notice issued. Learned advocate Mr. Vin for the petitioner submitted, that the SCA was considered by the learned Judge without there being a reply filed by the Bank though the Bank had filed its appearance in response to the notice.

2. The learned advocate for the appellant invited the attention of this Court to the fact that When the petitioner was serving as a Manager during the period 1986-87, some irregularities were alleged against him. Later on, the petitioner was charge-sheeted for the same. The learned advocate submitted that the irregularities alleged were qua the banking procedure and had nothing to do with the "integrity" of the petitioner. He submitted that in fact, the "integrity" of the petitioner was never under challenge. He further submitted that there was no financial loss to the bank. An inquiry was conducted against the petitioner, which was disposed of after leading and producing evidence. At the end of the inquiry, "a word of caution" was issued to the petitioner. The learned advocate submitted that in fact, the "word of caution" was to the effect that "the petitioner should be

more particular".

3. It is submitted by the learned advocate for the appellant that the said order was dated 17.1.1989. With issuance of "word of caution", the matter had concluded. Later on, the petitioner was promoted which is not disputed by the respondent Bank. It is the case of the appellant-original petitioner that it came as jolt when he received a letter dated 28.10.1997 withdrawing the "word of caution" after "Nine Years". Thereafter, a new charge-sheet was issued on 02.09.1998. The petitioner replied to the same chargesheet on 13.10.1998. The respondent bank still decided to set up an inquiry by order dated 20.4.1999. The inquiry officer submitted its report dated 22.2.2000 and the order of punishment in the form of a "censure" was issued on 31.10.2000.

At this juncture, the learned advocate for the appellant submitted that order of "censure" was issued without supplying the documents which were asked by the appellant - original petitioner on the ground that the record is old. The learned advocate submitted that this submission is made with a view to bring it to the notice of the Court that even according to the Bank the charge-sheet was so old that the Bank was not able to supply documents asked for by the petitioner. He submitted that as a disciplined employee of the Bank, the appellant did participate in the inquiry which was concluded by the Bank and an order of "censure" was issued.

4. The learned advocate for the appellant submitted that besides, the bank issued yet another charge-sheet on 02.09.1999. This inquiry was concluded on 08.10.1999 i.e., within a period of 36 days. There also, the respondent Bank thought it fit to issue an order of "censure" against the petitioner.

5. The learned advocate for the appellant submitted that the appellant would not have been disturbed had it been the matter so simple as it appears on its face. The appellant could feel the undercurrent in issuing these two censure orders. The learned advocate for the appellant submitted that when two censure orders are issued against an officer, he becomes dis-entitled for further promotion. That being so, the appellant was constrained to approach this Court by way of a petition.

This Court, on the opening of the hearing of this petition on 10.9.2008, asked Mr. Kogje, learned advocate appearing for the respondent Bank, to reply the following questions:

"(i) Under what provisions, rules or regulations, the Bank could have withdrawn the letter of caution dated 17th January 1989 and could have started regular departmental action.

(ii) Even after the letter of caution dated 17th January 1989 having been served, whether the appellant-employee had ever behaved in a manner which warranted withdrawal of letter of caution and initiation of regular departmental action.

(iii) Was any financial loss caused to the bank by the so-called action of the

appellant for which he was served with a letter of caution.

(iv) In between, viz., after serving with letter of caution and withdrawal of the same on 28th October 1997, if the appellant was given promotion; can it be said to be a waiver of right of the Bank to initiate a regular departmental action against the appellant for the same action of the appellant.

(v) Whether the letter of caution served on 17th January 1989 could have been withdrawn as belatedly as on 28th October 1997.

The learned advocate for the Bank was granted sufficient time to answer these questions.

6. Today when the matter is taken up for consideration, the learned advocate of the Bank submitted that on account of some inevitable circumstances he is not able to get the reply from the Bank to the aforesaid queries. He submitted that there is no communication in writing from the Bank, but orally he is conveyed the replies to these questions. He submitted that if some time is granted, he will be able to produce on record answer to question No. 2 i.e.. "Even after the letter of caution dated 17th January 1989 having been served, whether the appellant-employee had ever behaved in a manner which warranted withdrawal of letter of caution and initiation of regular departmental action". He submitted that the answer is in affirmative and, therefore, if some time is granted, he will be able to supply details of the same. He also submitted that in his respectful opinion, that will have a bearing in the result of this LPA.

7. So far as question at Serial No. 1 is concerned, the learned advocate for the Bank is not able to point out any specific provision. Rule or regulation, which permits the conduct of regular departmental inquiry after withdrawing the letter of caution. The learned advocate for the bank submitted that the issuance of letter of caution was an administrative action and it was not in lieu of the departmental inquiry and therefore, the action of the bank is not illegal.

The explanation is not found acceptable, more particularly in view of the fact that earlier also, the respondent Bank, after taking into consideration the entire material, had issued charge sheet, which was concluded by issuing the letter of caution. Now to say that it was an administrative action and it can be now substituted by regular departmental inquiry, cannot be accepted.

8. So far as question No. 3 is concerned, the answer is in negative. It is not the case of the Bank that the action of the appellant had caused any financial loss to the Bank.

9. So far as question No. 4 is concerned, there is no specific answer to this, but the fact is that after letter of caution was served to the appellant on 17.01.1987 and before it was withdrawn on 28.10.1997, the appellant was promoted. This question can also be answered in absence of any specific Rule that once a person is promoted, that fact of promotion cannot be overlooked. When earlier, the Bank had held an inquiry and it was concluded by issuing letter of caution, it is a

settled law that a person cannot be subjected to agony of trial for the same offence twice. On the same analogies, a person cannot be subjected to departmental inquiry twice for the same charge.

10. So far as question No. 5 is concerned, the question is as to whether the letter of caution issued on 17.01.1989 could have been withdrawn after 8 years and 9 months.

11. Mr. Vin, learned advocate for the appellant, submitted that there are decisions of the Hon'ble the Apex Court to the effect that when Government has to take any order in suo motu revision, that can be taken within reasonable period. In this regard, 1 year is considered to be the reasonable period. In the present case, it is after 8 years and 9 months that the letter of caution is sought to be withdrawn, which is beyond reasonable period, by any standards of reasonableness.

This Court has no hesitation in inferring that there are reasons which are not coming up on record that after having concluded a chapter in the year 1989, the same is opened by the Bank by withdrawing the letter of caution in the year 1997 and then the petitioner is issued second charge sheet on 02.09.1998, which is concluded within 36 days. There has to be some proportion in taking action against an employee. In one case, the order of caution is withdrawn after 8 years and 9 months, on the other hand, a charge sheet is issued on 02.09.1998 and an order of censure is passed concluding the inquiry on 08.10.1999. This shows that there is a reason for taking action against the petitioner. The reason is that the petitioner goes out of zone of consideration for further promotion.

12. Learned advocate Mr. Vin for the appellant invited our attention to the order passed in departmental appeal dated 12.07.2001. There also, no acceptable reasons are set out for which the appeal could have been dismissed. In the result, this appeal is allowed. Order dated 28.10.1997 withdrawing caution order is quashed and set aside. Besides, orders of censure 31.10.2000 and 08.10.1999 are also quashed and set aside. It is directed that the Bank shall consider the case of the appellant for further promotion in accordance with law.