

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3538 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

BANKIM C SHAH

Versus

BANK OF INDIA

Appearance:

1. Special Civil Application No. 3538 of 2002
GIRISH PATEL ASSOC for Petitioner No. 1
MR AJ YAGNIK for Petitioner No. 1
MR CHUDGAR for NANAVATI ASSOCIATES for Respondents No. 1-2
on caveat.
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CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 28/03/2002

ORAL JUDGEMENT

By this petition running into 36 pages, the petitioner, a Class III Employee working as Head Cashier

under the respondent Bank has approached this Court with a prayer to declare the very issuance of charge-sheet dated 15.2.2002 as violative of the Service By-laws regarding Disciplinary Proceedings of the Bank and further sought the relief of permanently restraining the respondents from holding Departmental proceedings or taking any other punitive action pursuant to the said charge-sheet. During the course of elaborate arguments by learned Counsel Mr. Anand Yagnik, it was sought to be vehemently contended that the disciplinary action of the respondents against the petitioner was mala fide, bad in law and likely to result into serious injustice to the petitioner. It was also contended that the enquiry officer appointed by the respondent Bank to enquire into the charges levelled against the petitioner was biased and that the Disciplinary Authority which was likely to take the ultimate decision was himself the witness and therefore, going to be a judge in his own cause. The learned Counsel sought to support his submission by referring two judgements of the Supreme Court, reported in AIR 1984 SC 1356 and AIR 1996 SC 1669.

The petitioner has already twice approached this Court in connection with the same charge-sheet and disciplinary action. In the first order dated 6.3.2002, (in Special C.A No. 3093 of 2000) in what appears to be the series of litigation, it is observed by this Court (Coram: A.R. Dave, J.) as under:-

"I have heard the learned Advocates. The only grievance which has been ventilated by the petitioner is that alongwith the charge-sheet, the documents on which the respondent Bank wants to rely upon in the course of the enquiry have not been given to the petitioner. It has been submitted by the learned Advocate for the petitioner that the prejudice would be caused to the petitioner if the said documents are not given to him before commencing of the enquiry."

It is stated at the bar by learned Advocate Mr. Chudgar that the order containing above observation was carried in appeal and the appeal was subsequently withdrawn.

In the second order dated 16.3.2002 in Special Civil Application No. 3336/2002, the relevant and material part of the order reads as under:-

"The short submission made on behalf of the petitioner is that in the ongoing enquiry against the

petitioner, a genuine difficulty has arisen in the matter of being properly defended due to the defence officer being on leave for genuine reasons. Learned Counsel Mr. Yagnik fairly submitted and conceded that the Departmental enquiry against the petitioner was required to be proceeded as far as possible on day-to-day basis and was also required to be completed expeditiously as possible. He further submitted that but for the aforesaid reason the petitioner is, and will be co-operating in the conduct of the enquiry and does not intend to prolong it on any flimsy ground."

Even after specific query therefor, the learned Counsel for the petitioner could not cite a single judgement or principle of law suggesting that this Court, under Article 226 of the Constitution of India, should exercise its jurisdiction to monitor the Departmental enquiry and examine each and every objection that the delinquent may have to raise at the appropriate stage. The learned Counsel only asserted that this Court should examine the record produced with the petition and enter into the merits of the objections of the petitioner and render a ruling on the same so as to prevent any violation of principles of natural justice or miscarriage of justice. However, it is obvious that the very purpose of holding a disciplinary enquiry is to give the delinquent employee an opportunity of being heard and the observance of principles of natural justice is an essential part of conducting a Departmental enquiry. It cannot be presumed that the enquiry officer or the disciplinary authority, due to any alleged bias or otherwise, would violate the principles of natural justice and make an illegal and unsustainable order. Therefore, in short the petition as well as the grievance ventilated by the petitioner are premature and based on mere apprehensions and allegations, which also the petitioner has the opportunity to voice in the Departmental proceedings.

In view of the observations made in the earlier orders it would also be unfair on the part of the petitioner to approach this Court at every juncture rather than facing the Departmental enquiry and allow the process to be carried to its logical conclusion. Therefore, the petition is summarily rejected as being premature at this stage, and also for the reason that the petitioner is already before an authority where he can voice his grievance and atleast place them on record.

* /Mohandas