

(2003) 12 AHC CK 0032
In the Allahabad High Court
Case No : Writ Petition No. 7780 (S/S) of 2003

Anil Kumar Srivastava

APPELLANT

Vs

Senior Regional Manager, Punjab National Bank and Others

RESPONDENT

Date of Decision : 18-12-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 AWC 1151

Hon'ble Judges : N.K. Mehrotra, J

Bench : Single Bench

Advocate : Rajiv Srivastava, for the Appellant; Sharad Bhatnagar, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Mehrotra, J.—By means of this writ petition, the petitioner has challenged the pending disciplinary enquiry and the charge-sheet against the petitioner. The petitioner has prayed for issuing a writ of certiorari for quashing the institution of the disciplinary enquiry as contained in Annexure-3. It has been further prayed for a writ of mandamus commanding Shri A. K. Mishra Senior Manager Punjab National Bank respondent No. 5, the General Secretary of the Punjab National Bank Staff Association, U.P. to intervene effectively in accordance with law on behalf of the petitioner in preventing the violation of para 11 of bi-partite settlement dated 10.4.2002.

2. Heard the learned counsel for the petitioner and Sri Sharad Bhatnagar learned counsel for the opposite party No. 1.

3. The petitioner is employee of Punjab National Bank he has filed the writ petition by impleading the Senior Regional Manager by name and by his office. Shri Anand Agrawal, Enquiry Officer, Shri A. K. Mishra, Senior Manager and General Secretary Punjab National Bank Staff Association for the aforesaid reliefs. Since the enquiry is pending prima facie writ petition appears to be

premature because enquiry is not concluded so far. After the conclusion of the enquiry the petitioner shall have the right of appeal if he is found guilty and punished in disciplinary enquiry.

4. The learned counsel for the petitioner has argued that it is a case of bias on the part of the employer and therefore the disciplinary proceeding at the stage of charge-sheet can be challenged in the writ petition and it can be entertained by this Court. In support of his contention the learned counsel for the petitioner has placed reliance on the State of Punjab v. V. K. Khanna and Ors., (Judgment of Supreme Court in Civil Appeal No. 6963 of 2000, decided on 30.11.2000), in which it has been held that "while it is true that justifiability of the charges at this stage of initiating a disciplinary proceeding cannot possibly delved by any Court pending enquiry but it is equally well-settled that in the event there is an element of malice or mala fide motive involved in the matter of issue of a charge-sheet or concerned authority is so biased then the law court will be justified in the interfering at the earliest stage so as to avoid the harassment of the public official." The learned counsel for the petitioner has pointed out two things : (1) Clause 11 of memorandum settlement as contained in Annexure-4 provides that when it is decided to take any disciplinary action against an employee, such decision shall be communicated to him within three days thereafter and in the instant case it has not been communicated within three days, and (2) the complaint on which the enquiry has been initiated is baseless. I find that at this stage these two grounds cannot be taken to be the basis of malice unless enquiry is completed. Prima facie it appears that the communication within three days is not mandatory because no consequences are provided if the communication is delayed.

5. The petitioner has sought a relief against the opposite party No. 4 for a direction to opposite party No. 4 to intervene on his behalf. I find that there is nothing on record to compel the opposite party No. 4 for intervention on behalf of the petitioner by opposite party No. 4 being General Secretary of Staff Association.

6. I am of the view that the writ petition is premature. There is every opportunity to the petitioner to place his case before the Enquiry Officer and if he is found guilty, he can file appeal before the appellate officer. The writ petition being premature it is liable to be dismissed.

7. In view of the above, the writ petition is dismissed.