(2014) 07 DEL CK 0012

In the Delhi High Court

Case No : W.P. (C) No. 5197/2001

Ashok Kumar Chhabra APPELLANT

Vs

Indian Bank RESPONDENT

Date of Decision : 28-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 07 DEL CK 0012

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Jagat Arora and Rajat Arora, Advocate for the Appellant; Vaibhav Kalra and Deepak Yadav, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—This petition invoking Article 226 of the Constitution of India impugns the order dated 9th March, 2000 of the Disciplinary Authority of the respondent Bank imposing upon the petitioner major penalty of dismissal from service in terms of Regulation 4(j) of Indian Bank Officer Employees'' (Discipline & Appeal) Regulations, 1976. The petitioner also seeks the relief of reinstatement with all consequential benefits.

2. Notice of the petition and the application for interim relief were issued though no interim relief granted. Rule was issued in the writ petition on 26th July, 2002 and the application for interim relief dismissed. The petitioner was permitted to file additional affidavit. Mediation was attempted but without any success. Written synopsis of submissions filed by the counsels are on record. The counsels have also been heard.

3. The arguments of the counsel for the petitioner are:

(i) that the petitioner, in the year 1972 selected and appointed as a Probationary Officer in the respondent Bank, served diligently and was promoted from time to time and was last working in the Senior Manager Grade Post (Scale-V) and had unblemished career;

(ii) that the petitioner, on account of the illness of the brother of his wife staying in USA, had to suddenly leave for USA on 29th December, 1998 and owing to the urgency could neither apply for and obtain leave nor even inform his employer, the respondent Bank of the same;

(iii) that the petitioner however vide his letter dated 2nd January, 1999 informed the respondent Bank of his sudden departure and applied for 90 days leave;

(iv) the respondent Bank though rejected the application for leave only in May, 1999, prior thereto commenced disciplinary proceedings against the petitioner for having absented from duty and which disciplinary proceedings have resulted in the punishment aforesaid being meted out to the petitioner;

(v) that the Disciplinary Authority of the respondent Bank has paid no heed to 26 years of unblemished service of the petitioner with the respondent Bank;

(vi) that though the respondent Bank vide order dated 3rd July, 2014 was directed to take instructions whether it was willing to convert the punishment meted out to the petitioner to that of voluntary retirement with all consequential retiral benefits and to which the petitioner is willing and which would enable the petitioner to at least have the respondent''s share of provident fund, gratuity, leave encashment etc. but the respondent Bank is not agreeable to that also; and,

(vii) that the petitioner having an unblemished service record of 26 years should not be deprived of his such retiral benefits.

4. On enquiry whether the petitioner, if the order of dismissal from service were to stand, would not be entitled to the respondent''s share of provident fund, gratuity, pension etc., the answer is in the affirmative.

5. I have enquired from the counsel for the petitioner as to when the petitioner returned from USA.

6. The counsel for the petitioner candidly admits that the petitioner has since settled in USA and except for brief visits, has not visited India.

7. It has further been enquired from the counsel for the petitioner as to on what kind of Visa did the petitioner go to USA.

8. The counsel informs that the petitioner was holding a Green Card issued by the US Government and even in December, 1998 had travelled on that basis. He however contends that the same should not be taken as the petitioner having left in December, 1998 without any intention to return, because the petitioner was holding the Green Card since the year 1992 but inspite of that had continued to serve the respondent Bank. The counsel reiterates that the petitioner after having served for 26 years ought to at least get his retiral benefits.

9. I have further enquired that had the petitioner continued to serve, when would

he have superannuated.

10. It is replied that the petitioner would have attained the age of superannuation only on 1st August, 2011 and as in December, 1998 had nearly 14 years of service left.

11. I have enquired from the counsel for the petitioner whether the rules of the respondent Bank permit availing of such retiral benefits after 26 years of service, even though nearly 14 years of service / employment remain.

12. Though the counsel fairly admits that the rules do not so permit but states that for this reason only the petitioner is willing to his case being considered as of voluntary retirement. It is stated that the petitioner had applied for voluntary retirement on 7th June, 1999 but which request was also rejected. However on further enquiry it is again fairly admitted that the said rejection of the request for voluntary retirement is not under challenge in this writ petition which is concerned only with the legality of the decision of the Disciplinary Authority to dismiss the petitioner from service.

13. Upon the counsel for the petitioner seeking to urge grounds of violation of principles of natural justice and of the procedure prescribed in the Indian Bank Officer Employees''(Conduct) Regulations 1976, I have enquired, whether not the Conduct Rules of the Bank provide for cessation of service / employment by abandonment i.e. by remaining unauthorizedly absent for a certain period of time.

14. Though the counsel for the respondent Bank in this regard invites attention to the judgment dated 8th November, 2011 of the Division Bench of this Court in Sukhdev Singh Vs. Delhi Development Authority, but the counsel for the petitioner states that in so far as he recollects, the said provision is contained in the Bipartite Agreement between the workmen of all Nationalized Banks and the Association of all Nationalized Banks and is applicable only to workmen and not to officers. It is further stated that neither was that a ground for dismissal of the petitioner nor for holding the employment / services of the petitioner to have come to an end nor is such case set up in opposition to this writ petition.

15. Though in the aforesaid facts and circumstances, particularly with the benefit of the hindsight, of the petitioner even after the order of dismissal of his services which itself was passed after more than one year of his unauthorized absence and during the pendency of this petition for nearly 13 years, having not come back to India and having settled down in USA, I was of the opinion that no error can be found especially in the exercise of jurisdiction under Article 226 of the Constitution in the dismissal by the respondent Bank of the petitioner from service but the counsel for the petitioner argued that of the following eight charges in the charge sheet dated 25th March, 1999 issued to the petitioner:

1. You have been unauthorisedly absenting yourself from duty since 29.12.98 without getting prior permission from Zonal Manager, New Delhi.

2. You have failed to get sanction of leave from Competent Authority in terms of regulation 33(5) of Indian Bank (Officers'') Service Regulation 1979 before unauthorisedly absenting yourself from duty.

3. You have failed to get permission from Competent Authority before leaving the Station / Head Quarters / Place of posting.

4. You have failed to inform your address at USA for communication instead you have furnished your local address at Yamunanagar in Haryana State.

5. You were in the habit of absenting from duty without getting prior permission from Zonal Manager, New Delhi. Hence, Zonal Manager, New Delhi advised you to desist from such practice. Inspite of that you have failed to correct yourself.

6. Zonal Manager, New Delhi advised you to desist from the practice of remaining absent and subsequently on 28.01.99 disapproved your action and recalled you to resume duty. Still you remain absent unauthorisedly. This shows the scant respect you have for the rules / regulations of our Bank as well as towards directions of your higher authorities.

7. Your frequent abstention is detrimental to the interest of the bank in that the specialized branch such as Overseas Branch, New Delhi is made to suffer without regular Branch Manager.

8. You have failed to submit photocopy of the passport with number allotted by the issuing authority and also copy of the visa before proceeding abroad.

the Inquiring Authority held the petitioner guilty of charges 1 to 4 supra only and held the charges 5 to 8 having not been proved; notwithstanding the same and notwithstanding the Disciplinary Authority having concurred with the findings of the Inquiring Authority, the Disciplinary Authority has held the petitioner to be in violation of Regulations 13(1), 33(5) and 40, observing:

The Assistant General Manager of the Bank is in Senior Management cadre Scale V in the hierarchy, which comprised seven scales. This official failed to show utmost devotion to duty and dedication in the discharge of his duties. He was the Branch Head of Overseas Branch at New Delhi. This branch was handling transactions running to several crores of rupees including the transaction in Foreign Exchange. Absenting from duty without prior permission from bank for a very long duration has caused irreparable inconvenience to the clients at the branch and thereby the Bank''s interests. As such, they are serious in nature amounting to acts, which are prejudicial to the interest of the Bank and further amounts to disobedience of the lawful instructions of his superiors. It is totally unbecoming of him to have acted in the above manner.

16. It is contended that no work / function of the respondent Bank has been proved to have suffered owing to the absence of the petitioner and without the respondent Bank having been proved to have suffered any loss owing to the unauthorized absence of the petitioner, the punishment meted out of dismissal

from service is disproportionate and harsh.

17. I have enquired from the counsel for the petitioner whether not the consequence of the argument, that the work of the respondent Bank inspite of unauthorized absence of the petitioner not suffering, amounts to saying that the petitioner was doing no work, was a shirker and his services were redundant.

18. No answer is forthcoming. It is however argued that the finding of the Disciplinary Authority, of absence from duty of the petitioner without permission having caused irreparable inconvenience to the clients at the branch of the respondent Bank and thereby being detrimental to the respondent Bank''s interest is without any charge to that effect.

19. There is no merit in the said argument also which is but another way of saying that it made no difference to the working of the respondent Bank, whether the petitioner was present or not and which would also be indicative of non-performance of duties by the petitioner.

20. Though the counsel for the petitioner has sought to urge that the petitioner was in a Senior Managerial position and had an Assistant Manager and the said Assistant Manager looked after the interest of the clients but the same again does not speak highly of the petitioner and shows the redundancy of the petitioner and the petitioner having no role whatsoever in the working of the respondent Bank. Such a person in any case deserves no relief in the exercise of discretion under Article 226 of Constitution of India.

21. The counsel for the petitioner has next contended that the petitioner has in this petition also raised the ground of discrimination. Attention is invited to ground `M'' where the petitioner has alleged that one Scale IV official Shri Hari Ram looking after the post of Chief Manager, Personnel (i.e. the same post which the petitioner was occupying) was absent without prior permission for more than four years but was treated differently. Attention is also invited to the counter affidavit to show that except for stating that the case of the said Hari Ram was different, no other explanation has been given.

22. The counsel for the petitioner however fairly admits that the said ground has been taken for the first time in this petition and in fact not raised, neither before the Inquiring Authority (before which the petitioner in any case was ex parte and did not appear) nor before the Appellate Authority of the respondent Bank.

23. I am however of the view that there can be no concept of negative equality (See Union of India (UOI) and Others Vs. M.K. Sarkar,). Even if it were to be believed the respondent Bank had failed to invoke its disciplinary powers against another similarly placed as the petitioner, the same would not constitute a ground to set aside the action of the Disciplinary Authority qua the petitioner, if otherwise found in accordance with law.

24. The counsel for the petitioner has next contended that the application dated 2nd January, 1999 of the petitioner for leave, was dealt with only in May, 1999

i.e. after the petitioner had been charge sheeted.

25. The counsel for the respondent Bank however draws attention to the letter dated 23rd February, 1999 of the respondent Bank to the petitioner stating that the said letter dated 2nd January, 1999 had been delivered by the representative of the petitioner only on 22nd January, 1999 and the request in the letter dated 2nd January, 1999 was declined and the petitioner was asked to report for duty.

26. The counsel for the petitioner is thus not correct in contending that the application of the petitioner for leave remained pending.

27. The counsel for the petitioner has next contended that the explanation offered by the petitioner, of the petitioner having to leave hurriedly without leave being sanctioned owing to the medical emergency of his brother-in- law, has not been dealt with.

28. The counsel for the respondent has contended that as is apparent from the contemporaneous correspondence including the letter of rejection of leave, the request of the petitioner was considered. It is further contend that the ground of illness of the brother-in-law was vague without naming any disease or the hospital if any to which the brother-in-law was admitted or furnishing any documents. It is also contended that though the Rules & Regulations of the respondent Bank require an officer as the petitioner to communicate the address at which he could be contacted but the petitioner at no time furnished the particulars of his USA address, even when called upon to do so, and merely gave the address of Yamunanagar for correspondence and where he admittedly was not present.

29. The aforesaid conduct of the petitioner leads me to think that the petitioner did not want the respondent Bank or anyone to even know as to where in USA he was / is. Perhaps the petitioner wanted to avoid the respondent Bank contacting the US Embassy or the US Government and before whom the petitioner may have given a different version.

30. The counsel for the petitioner has lastly urged that the documents were not given along with charge sheet. He is however unable to state as to what documents were required to be given; in fact, the charges on which the petitioner has been found guilty pertain to admitted factual position and such pedantic arguments of non-compliance of the principles of natural justice which have not affected the outcome of a proceeding can have no place in the present state of affairs.

31. The counsel for the petitioner has lastly drawn on the sympathy aspect and has contended that the Court can interfere with the punishment awarded so that the petitioner at least gets the fruits of 27 years of services rendered to the respondent Bank. Reliance in this regard is placed on Ranjit Thakur Vs. Union of India (UOI) and Others, and Union of India and others Vs. Giriraj Sharma, .

32. The counsel for the respondent Bank has invited attention to Sukhdev Singh

supra where the Division Bench of this Court observed that functioning of the public bodies would come to a naught if their employees were to be permitted to absent themselves and join back at their whims and fancies and that by service of notices / memos ample opportunity was given and the workman in that case and he was not entitled to contend that his dismissal was not fair. It is further contended that the entire argument of non-compliance of regulations aforesaid is without any basis. It is contended that even the report of the Inquiring Authority relies only on the documents of the petitioner itself.

33. The counsel for the petitioner in rejoinder states that the petitioner has along with additional affidavit filed documents of the medical treatment of his brother-in-law.

34. Having considered the matter, I repeat, with the benefit of hindsight, it is quite clear that the petitioner intentionally made a choice to migrate to USA and the present cannot be said to be a case where the petitioner, owing to an emergent situation in his family, had to leave station without intimation as he was required to do as per the rules of his employment. The subsequent conduct of the petitioner, of not returning to India is indicative of the petitioner in December, 1998 having left the country without any intention to return and the petitioner, besides enjoying the benefits of migration to another country is merely attempting to reap benefits from employment which he chose to abandon. The counsel for the petitioner admits that the employment rules of the respondent Bank do not permit payment of retiral benefits in the event of dismissal. If the petitioner was honest, he ought to have before migration informed the respondent Bank of his decision and applied for voluntary retirement. The petitioner however chose to indulge in hoodwinking and has not made a clean breast of things.

35. Even in this petition, the relief of reinstatement is sought when it is clear that the petitioner had no intention to come back. If the petitioner had left in December, 1998 owing to an emergency, he would have definitely come back after say three months or six months. The petitioner however did not do so and is only attempting to reap retiral benefits which are not due to him.

36. The counsel for the petitioner at this stage states that the petitioner can be deprived of gratuity, only if loss is shown to have been caused to the respondent Bank and since the limitation for the petitioner to seek gratuity has expired, permission for filing the said claim be given.

37. All that can be observed is that the petitioner, if entitled to in accordance with law, would be entitled to make a claim for gratuity.

38. There is no merit in the petition which is dismissed. Though the petitioner has unnecessarily taken up judicial time inspite of having not returned to India but I refrain from imposing any costs on the petitioner in the hope that good sense will prevail over the petitioner. If however the petitioner desires to take the matter further, in that case the petitioner shall also be liable for costs of this

petition assessed at Rs.25,000/-.