
(2017) 05 DEL CK 0083

In the Delhi High Court

Case No : 3509 of 1999

BHARAT BHUSHAN GOEL

APPELLANT

Vs

P.N.B. & ORS.

RESPONDENT

Date of Decision : 15-05-2017

Acts Referred:

[Punjab National Bank officer Employees \(Discipline and Appeal Regulations\), 1977A](#), Regulation 14(4)

Citation : (2017) 05 DEL CK 0083

Hon'ble Judges : V. Kameswar Rao

Bench : SINGLE BENCH

Advocate : Subhiksh Vasudev, Udayan Tandon, Jagat Arora, Rajat Arora

Final Decision : Disposed off

Judgement

1. The present petition has been filed by the petitioner with the following prayers:-

"(i) Issue writ of appropriate nature, order or direction including a writ in the nature of mandamus directing the respondents to reinstate the petitioner.

(ii) Issue writ of appropriate nature, order or direction including a writ in the nature of mandamus directing the respondents to grant all promotional benefits.

(iii) Issue writ of appropriate nature, order or direction including a writ in the nature of mandamus directing the respondents to pay all dues to the petitioner.

(iv) Issue any other writ, order or directions which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

(v) Allow the writ petition with costs.

(vi) Any other and such further order which this Hon'ble Court may deem fit and proper may also be passed against the respondents and favour of the petitioner."

2. Some of the relevant facts are, the petitioner joined the respondent no.1/Bank

on

August 1, 1977. He was promoted as Officer in JMG Scale-I on December 10, 1984.

He was appointed as Assistant Manager on July 8, 1986. In the year 1992, he was posted as Assistant Manager of the Bank in Saharanpur. It is his case that on April 6,

1992, he wrote a letter to Regional Manager regarding absence of Mr.B.L.Thapa. On

March 15, 1993, he was suspended. On April 10, 1993, a charge sheet was issued to him

for certain misconduct. It is his case that the enquiry commenced and the enquiry officer gave findings against him in his report dated January 9, 1996. On September 12,

1996, an order was passed by the Disciplinary authority whereby he was removed from

the services of the Bank, which shall not be a disqualification for future employment.

He states that the order dated September 12, 1996 was conveyed to him on January 16,

1997. It is his case that on March 5, 1997, he preferred an appeal to respondent no.3

which appeal was rejected vide order dated December 31, 1997. The counter affidavit

to the writ petition has been filed by the respondents so also rejoinder by the petitioner.

3. Mr. Subhiksh Vasudev, learned counsel for the petitioner has made three submissions in his challenge to the impugned orders. According to him, the petitioner

was denied a reasonable opportunity in defending himself in the enquiry proceedings,

inasmuch as on May 20, 1993, the petitioner had sought certain records, which were

denied by the respondents. In that regard, he has drawn my attention to pages 39 and 41

of the paper book, which depicts the respondents rejecting the request of the

petitioner

for records by stating that he has been served with the relevant record relating to the

charge sheet, and nothing more i.e. the record relating to his incumbency only. In other

words, the request of the petitioner was rejected inter alia, on the ground that the record

during the period, he was working in the concerned branch is the relevant record for the

purpose of charge sheet. On a specific query from the Court as to whether the record

prior to the petitioner joining the concerned branch was relevant for the purpose of the

charges, Mr. Subhiksh Vasudev concedes that such record was not relevant. He states

that the petitioner had sought the record only to make good his point that Mr.Thapa was

also involved with the identical omissions and commissions.

4. Be that as it may, Mr. Subhiksh Vasudev does not vociferously press this submission of his.

5. The second submission urged by Mr. Subhiksh Vasudev was that non-payment of

subsistence allowance has resulted in denial of reasonable opportunity to the petitioner

to defend himself in the enquiry proceedings. He would draw my attention to para 6 of

the writ petition in this regard.

"The petitioner had no source of income or to earn bread and butter for his four daughters. Hence, the petitioner with few of his friends tried to earn his livelihood by arranging to impart computer education. Because of monetary constraints, the petitioner was compelled to avail credit facility from State bank of Patiala in December, 1993. The regional office of respondent no.1, however, exerted pressure on the said bank which happen to be Scheduled Commercial bank and the loan was recalled and had to be repaid/adjusted by the petitioner almost before four years before its actual term. The loan was got adjusted under pressure which is clearly reflected from the letter dated 23.01.1995 copy

whereof is annexed as ANNEXURE-13. It clearly indicates that the petitioner was left with no source of any income except bare minimum day-to-day necessity which was partially being supported by friends and relatives in addition to the meager monthly contribution by his wife."

6. In support of this contention, he would state that the petitioner had written to the

disciplinary authority for the payment of subsistence allowance. Unfortunately, the plea

was rejected on the ground that the petitioner was carrying out and was engaged in

business and in terms of Regulation 14(4) of the Regulations of 1977, the petitioner was

not entitled to payment of subsistence allowance during the period of suspension. He

states the business did not take off and the loan taken had to be repaid by selling the

computer hardware and also arranging the money from his near relations.

7. To support his contention, Mr. Subhiksh Vasudev would rely on the judgment of the Supreme Court in case titled Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. &

Anr . (1999) 3 SCC 679.

8. The third submission advanced by Mr. Subhiksh Vasudev was, that in the hearing

of the departmental enquiry held on May 2, 1994, the request of the petitioner for appointment of Mr.S.C.Chauhan as DR was accepted and it was decided by the Enquiry

Officer to write a letter to the Head in I&C Division where Mr.Chauhan was working so

that he may present himself on the next date of enquiry. According to Mr. Vasudev, the

next date of enquiry was May 3, 1994, when the petitioner could not appear because of

his ill-health which aspect he conveyed to the Enquiry Officer, who rejected the request

on the ground that the request is not accompanied by medical prescription of the

Doctor.

According to him, the rejection of his request was not communicated to the petitioner.

The petitioner was under the bona fide belief that the Enquiry Officer having accepted

his request for appointment of DR and till such time the Enquiry Officer writes to the

Head of his DR in I&C Division and concurrence is given no proceedings shall take place. Unfortunately, the Enquiry Officer had not written to the Head of Division of Mr.S.C.Chauhan, (DR) to seek his concurrence, because of which his DR could not attend the proceedings. Similar to this submission is his submission that vide communication dated October 15, 1994 (Annexure P-12) the petitioner was informed

that departmental enquiry fixed for 18th instant, has been postponed and the next date

shall be advised soon. In other words, he states, the petitioner was to be informed about

the next date in the Enquiry but no such intimation was sent by the Enquiry Officer to

the petitioner.

9. According to him, because of the fault of the Enquiry Officer, neither he nor his DR could attend the hearings of the Enquiry, wherein the Enquiry Officer proceeded ex-

parte against petitioner and held the charges as proved against the petitioner, which

resulted in the impugned orders, which are in violation of fair play.

10. On the other hand, Mr.Jagat Arora, had vehemently opposed the three submissions made by Mr. Subhiksh Vasudev.

11. In so far as the first submission of Mr. Subhiksh Vasudev that the respondents have denied the record beyond the period of incumbency is concerned, he has submitted

that there is nothing illegal about it as is clear from the stand of the respondents in their

letter dated 20th May, 1993 (page 41 of the paper book), the record asked for, was not

relevant to the charges framed against the petitioner, inasmuch as the petitioner had

sought for the record for the period when he was not posted in the Branch, which according to him was not relevant. It was his submission, that it is not the case of the

petitioner that record relevant to the charges have not been given. He seeks rejection of

this submission.

12. On the second submission of Mr. Subhiksh Vasudev, Mr.Jagat Arora would state

that the denial of subsistence allowance was for a valid reason that the petitioner had

undertaken a business. Even otherwise, it was his submission that the petitioner has not

pleaded any prejudice caused to him for non-payment of the subsistence allowance. He

relied on two judgments of the Supreme Court on this point being Indra Bhanu Gaur

vs. Committee, Management of MM Degree College & Ors . 2003 (99) FLR 1040 and

UP State Textile Corporation Ltd. vs. P.C.Chaturvedi & Ors . 2006 (109) FLR 411. He

also stated the judgment of the Supreme Court in the case of Cap. M.Paul Anthony

(supra) relied upon by Mr.Vasudev is not applicable to the facts of this case.

13. On the third submission of Mr. Subhiksh Vasudev that the Enquiry Officer while

rejecting the request of the petitioner for deferring the proceedings on May 3, 1994 to

contend that the non communication of rejection by the Enquiry Officer was only a ploy

to challenge the proceedings but otherwise neither the petitioner nor the DR whose

appointment was accepted by the Enquiry Officer made any attempt to make enquiries

/ascertaining from the Enquiry Officer about the development/date of hearing in the

proceedings, as between May 3, 1994 till October 18, 1994 around 5-6 hearings were

held. Failure on the part of the petitioner / DR to take such steps, would make the plea

of denial of reasonable opportunity to the petitioner to defend himself in the departmental enquiry unsustainable. On similar submission of Mr. Subhiksh Vasudev

that the enquiry officer despite stating in the communication dated October 15, 1994

that the next date shall be advised, and the same having not been done by the Enquiry

Officer because of which the petitioner could not attend the hearing is concerned, the

said plea on behalf of the petitioner is an afterthought. According to Mr.Arora, the petitioner has been absenting earlier also on one pretext or the other. That apart, he

would state that subsequent to October 18, 1994 many proceedings were held till September 16, 1995 (last date of hearing) but neither the petitioner nor the DR cared to

know from the Enquiry Officer the status of the proceedings /the date of hearing in the

Enquiry. He seeks rejection of this submission as well.

14. Having heard the learned counsel for the parties, in so far as the first submission

of Mr. Subhiksh Vasudev of denial of record by the respondents is concerned, I do not

see any illegality in the respondents communicating to the petitioner that the petitioner

is only entitled to the record relating to the charge sheet that is relating to his incumbency in the branch concerned and nothing more I have seen the charges which

have been framed against the petitioner, the same relates to his conduct while he was

posted at Kaluwala Paharipur Branch office. Any record for an earlier period when the

petitioner was not posted in the said branch would not be relevant record for the purpose

of the charges as framed against the petitioner and the plea that Mr. Thapa was involved

in similar omissions and commissions shall not have any effect on the charge sheet

issued to the petitioner. In fact during his submissions, Mr. Subhiksh Vasudev had fairly conceded on this aspect. Hence, the plea of Mr. Subhiksh Vasudev in this regard

needs to be rejected.

15. In so far as the second submission of Mr. Subhiksh Vasudev that denial of payment of subsistence allowance resulted in denial of a reasonable opportunity to the

petitioner to defend himself is concerned, it is the stand of the respondents that the same

was denied to the petitioner as he had undertaken a business. The communication is

dated August 16, 1993. The said communication has not been challenged by the petitioner.

16. It is not his case that the enquiry proceedings were held at a far of place from Saharanpur. That apart, in the communications dated September 21, 1993 and April 8,

1996 (after the enquiry proceedings) to the disciplinary authority, it is not the case of the

petitioner that he was unable to attend the enquiry proceedings because of non-payment

of subsistence allowance. He in those communications has only stated that he is in

urgent need of money to meet his household expenses, school expenses of his children

and medical expenses etc, which stand is not the same as sought to be contended by Mr.

Vasudev.

17. Mr. Subhiksh Vasudev has referred to the judgment of the Supreme Court in Capt. M. Paul Anthony (*supra*), where the Supreme Court has noted because of penury,

he was unable to attend the departmental enquiry. There is also a finding that because

of the financial difficulties, the petitioner therein could not undertake any journey from

his home town in Kerala to Kolar Gold Fields in Karnataka for participating in departmental proceedings. No doubt, the Supreme Court observed that the plea because

of penury occasioned by non-payment of subsistence allowance and the plea that he

could not undertake a journey to attend the disciplinary proceedings were taken for the

first time in the High Court, but it is noted the petitioner therein was working as a Security Officer whereas the petitioner in this case at the relevant time was working as

officer incharge of the branch office of the respondent bank. That apart, the enquiry

proceedings were being held in and around Saharanpur unlike in Capt. M.Paul Anthony

case, wherein they were held in Kolar Gold Mines at Karnataka, away from Kerala . In

any case, in the subsequent judgment of Indra Bhanu Gaur (*supra*), the Supreme Court

has held that such a plea was not taken before the authorities, nor it was pleaded that

prejudice has been caused to him, the Supreme Court held that unless prejudice is

shown and established mere non-payment of subsistence allowance cannot ipso facto be

a ground to vitiate proceedings in every case. In the present case also, the

petitioner has

not pleaded any prejudice having been caused to him because of non-payment of subsistence allowance. On similar lines is the judgment of the Supreme Court in the

case of UP State Textile Corporation Ltd. (supra), the Supreme Court has held as under:-

11) In so far as the effect of not paying the subsistence allowance is concerned, before the authorities no stand was taken by the respondent no.1-employee that because of non-payment of subsistence allowance, he was not in a position to participate in the proceedings, or that any other prejudice in effectively defending the proceedings was caused to him. He did not plead or substantiate also that the non-payment was either deliberate or to spite him. It is ultimately a question of prejudice. Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso facto be a ground to vitiate the proceedings in every case. It has to be specifically pleaded and established as to in what way the affected employee is handicapped because of non-receipt of subsistence allowance. Unless that is done, it cannot be held as an absolute position in law that non-payment of subsistence allowance amounts to denial of opportunity and vitiates departmental proceedings. 12) The above position was highlighted in Indra Bhanu Gaur v. Committee, Management of MM Degree College and others .

18. The second submission of Mr. Vasudev is liable to be rejected as it is not the case

of the petitioner in his representation, that he was unable to attend the proceeding for

want of subsistence allowance, nor he has pleaded and proved, prejudice has caused to

him. In so far as the submission of Mr. Subhiksh Vasudev that the Enquiry Officer was

required to inform the date of hearing post May 3, 1994 and October 18, 1994 is concerned, as contended by Mr.Arora, many proceedings were held thereafter but no

attempt was made by the petitioner to ascertain from the Enquiry Officer about the

status of the proceedings is appealing. I may note, 17-20 hearings were held from May

3, 1994 till September 15, 1995 in 11 months. Surely a person in the position of

the

petitioner shall be keen to know next date of hearing or the developments in the proceedings. He shall not take it for granted that no date has been fixed. He after waiting for some reasonable time could have written a letter to the Enquiry Officer or

his DR to know the date of hearing / status of the proceedings. In fact there is no averment in the writ petition as what steps have been taken by the petitioner on not

hearing from the Enquiry Officer with regard to the dates of hearing be it after May 3,

1994 or October 18, 1994. No doubt it was the duty of the Enquiry Officer to inform the

rejection of the request of adjournment or notifying the date of hearing, which the

Enquiry Officer was doing, but the communications were being received back. In any

case, there is a corresponding duty on the petitioner to seek information from the Enquiry Officer on the status of the proceedings. Not even a single communication has

been placed on record to show he sought information from the Enquiry Officer in that

regard. It does appear that the petitioner was not keen in attending the proceedings and

had allowed it to culminate without participating in the same. The petitioner cannot

now plead, denial of a reasonable opportunity to him, by the Enquiry Officer. This submission is also liable to be rejected.

19. Mr. Subhiksh Vasudev has not made any submission with regard to the findings

of the Enquiry Officer in his report. In the absence of any such plea and this Court rejecting the three submissions made by Mr. Vasudev, suffice to state, the petitioner is

not entitled to any relief. The writ petition is without any merit, it is dismissed.

CM 10525/2001

20. During the course of his submissions, the learned counsel for the petitioner has

drawn my attention to an application being CM no.10525/2001 filed by the petitioner

for a direction to the respondents to pay subsistence allowance to the petitioner in terms

of order dated March 19, 2001.

21. On March 19, 2001, this Court while considering the writ petition and on a submission made by the learned counsel for the petitioner that no subsistence allowance

was paid from August 16, 1993 till September 12, 1996 when he was under suspension

noted the stand of the learned counsel for the respondents that since the petitioner did

not submit certificate of being not engaged in any employment, business, profession or

vocational employment in terms of Regulation 14(4) of the Punjab National Bank

officer Employees (Discipline and Appeal Regulations), 1977, the subsistence

allowance could not be disbursed in favour of the petitioner. It was also the stand of the

respondents that the subsistence allowance was not paid as the petitioner was running a

Computer Training Centre during the aforesaid period. This Court noting that this

aspect has not been specifically dealt with by the petitioner in rejoinder has observed

that the petitioner may even now furnish a fresh certificate without prejudice to the

rights and contentions of the parties in the writ petition. It is noted, the petitioner had

filed a certificate on May 24, 2001. As the respondents did not pay the arrears of subsistence allowance, despite certificate, the petitioner filed an application being CM

10525/2001 on September 27, 2001. When the said application was listed on December

11, 2001, this Court observing the petition be listed for final hearing on March 6, 2002

directed that the application be also listed on that date. That when the matter was listed

on September 27, 2002, this Court observing that the petitioner has still not complied

with the order dated March 19, 2001, wherein the petitioner was directed to mention the

period when he was running the computer centre directed appropriate affidavit be filed

within four weeks. The respondents filed reply to the application.

22. It is noted that the petitioner filed an affidavit on December 18, 2002. The respondents herein filed reply affidavit to the said affidavit filed by the petitioner on

March 17, 2003, wherein the respondents in para "G" (Page 254) has stated as under:-

"G. The petitioner was suspended from service on 15.03.1993 and the order of punishment was made on 12.09.1996. He had been paid the subsistence allowance till November, 1993. Thereafter, it was not paid to him on account of his not furnishing of certificate as required under the Regulations. Subsequently during the proceedings before the Hon"ble Court the petitioner had submitted such a certificate though not strictly in accordance with the regulations and as such the respondent-bank calculated his subsistence allowance from the period 24.01.1995 to 12.09.1996, when the order of punishment of removal was made and that amount came to Rs.89,429.98/-. This amount was credited in his account on 18.08.2001 and was appropriated on account of outstanding of vehicle loan which stood at Rs.2,36,787/- at that time. This vehicle loan had not so

far been fully paid by the petitioner even after adjusting the amount of Rs.89,429.98/-. There is still a sum of Rs.2,20,730.02/- plus interest w.e.f. 18.08.2001 which is payable by the petitioner." 23. The respondents filed a further additional affidavit on August 25, 2003. In this

additional affidavit the respondents have averred in para F that the respondents have

considered the matter regarding payment of subsistence allowance and found that the

petitioner would be entitled for payment of subsistence allowance for the period from

January 24, 1995 to September 12, 1996, amounting to Rs.89,429.98 as calculated in

August, 2001 after the petitioner submitted his certificate dated May 25, 2001.

24. It is the case of the respondents that the subsistence allowance as payable to the

petitioner of Rs.89,429.98 has been adjusted against vehicle loan.

25. Mr. Vasudev states, the respondents could not have adjusted the subsistence allowance for any reason. He states, the same was payable as a means of sustenance.

That apart, it is his plea that the stand, that the petitioner had undertaken a business and

as such was not paid subsistence allowance is without any basis. Merely, the petitioner

had taken loan from bank without any further evidence that the business had actually

commenced and the petitioner had sufficient means of sustenance, the respondents

could not have denied the same. He states the petitioner has given a certificate, stating

that he was neither engaged in any business activity, profession, vocational employment

or occupation nor was gainfully employed. He states, in the affidavit, the petitioner has,

in paras (b), (c) and (d) has averred on the aspect of loan and business.

26. Mr. Arora, on the other hand, would reiterate the stand taken in the reply/additional affidavit as noted above.

27. Having heard the learned counsel for the parties on this application, the issue of

subsistence allowance can be divided into two periods; (1) December 1, 1993 to January

24, 1995 and (2) January 25, 1995 to September 12, 1996.

28. Insofar as the claim of the petitioner for grant of subsistence allowance for the

period December 1, 1993 to January 24, 1995 is concerned, as already held by

me that

the petitioner has not challenged the order dated August 16, 1993 whereby the respondents had rejected the request of the petitioner dated August 4, 1993 for payment

of subsistence allowance by relying upon Regulation 14(4). Hence, the challenge by

way of an application, that too after a period of more than six years shall be unsustainable.

29. Insofar as the period between January 25, 1995 to September 12, 1996 is concerned, it is the stand of the respondents in their additional affidavit that they have

adjusted the subsistence allowance as payable during this period i.e Rs.89,429.98/-,

against Outstanding Vehicle Loan, which stood at Rs.2,36,787/- at that time. This stand of the respondents presupposes that the petitioner was entitled to the subsistence

allowance with effect from January 25, 1996, a day after the petitioner had repaid the

loan. In other words, the day when the petitioner cease to be engaged in a business

activity. If that be so, it is a settled position of law, the subsistence allowance cannot be

withheld if an employee is not gainfully employed as the same is given as means of

sustenance. Mr. Arora has not shown me any Rule in support of the stand of the Bank

that subsistence allowance could have been adjusted against a vehicle loan. Hence, the

adjustment of the amount of Rs.89,429.98/- is not tenable. The petitioner is entitled to

the said amount and the same shall be released to the petitioner with interest at the rate

of 9% per annum, calculated with effect from September 12, 1996 within a period of

eight weeks from the date of receipt of this order. The application is disposed of.