(2018) 08 DEL CK 0261

In the Delhi High Court

Case No : Civil Writ Petition 8614 OF 2003

Dalbir Singh Sohi APPELLANT

Vs

Punjab & Sind Bank & Anr RESPONDENT

Date of Decision : 17-08-2018

Acts Referred:

Citation : (2018) 08 DEL CK 0261

Hon'ble Judges : C.HARI SHANKAR, J

Bench : Single Bench

Final Decision : Allowed

Judgement

C. HARI SHANKAR, J.

1. Dalbir Singh Sohi, the petitioner, joined the services of the Respondent No. 2-Bank (hereinafter referred to as â??the Bankâ?) in 1974. On 30th

March, 1991, he applied, to the Bank, for being sanctioned two monthsâ? earned leave, w.e.f. 10th April, 1991, to enable him to attend the marriage of

his niece in Canada. Leave, as prayed for, was admittedly sanctioned, to the petitioner, by the Bank, for the period 7th May, 1991 to 6th July, 1991

(the Bank calls it â??privilege leaveâ??).

2. The petitioner, thereafter, applied for extension of leave, on 29th June, 1991 and 28th July, 1991, for thirty days on each occasion, on the ground of

ill-health. The petitioner has also annexed, with the writ petition, a medical certificate, dated 25th July, 1991, issued by one Dr. P.S. Aulakh, which,

according to the petitioner, was submitted by him in support of the request leave. The respondent, however, contends that no such medical certificate

was submitted. Owing to various circumstances that transpired thereafter, however, this aspect has lost much of its significance, as the recital that follows would reveal.

3. On 15th October, 1991, a charge-sheet was issued, to the petitioner, by the Asst. General Manager of the Bank as disciplinary authority

(hereinafter referred to as â??the DAâ?). The charge-sheet contained two charges. The 1st charge was of the petitioner having been unauthorisedly

absent from duty after 6th July, 1991. It was acknowledged, in the charge-sheet, that the petitioner had sought extension of the leave granted to him,

by his letters dated 29th June, 1991 and 28th July, 1991; however, it was asserted that can a vide letter dated 27th August, 1991, issued by the Zonal

Office, the petitioner was informed that his absence from duty was unauthorized, and was advised to report for duty by 15th September, 1991, failing

which action was threatened against him. The petitioner had failed to do so; ergo, alleged the charge-sheet, the petitioner was guilty of unauthorized

absence from work, as well as disobedience of the order issued by his superior. It was further stated, in the charge-sheet, that the petitioner had been

issued a show cause notice in this regard, but that there was no response thereto. The second allegation, in the charge-sheet, was that the petitioner

had been asked to submit his property returns for the years ending 31st March, 1988, 31st March, 1989 and 31st March, 1991, but that he had failed to

do so. These actions/inactions, on the part of the petitioner, it was alleged, breached Regulations 3(1), 3(2), 13(2) and 20 of the Punjab & Sind Bank

Conduct Regulations (hereinafter referred to as â??the Conduct Regulationsâ??).

4. The petitioner responded, to the aforementioned charge-sheet, submitting that he was on sanctioned leave, in Canada, till 6th July, 1991, and that he

had sought extension of his leave, vide letters dated 29 th June, 1991 and 28th July, 1991 only because of his medical condition, in support whereof he

had furnished the requisite medical certificates. The petitioner denied having ever received the letter, dated 27th August, 1991, stated to have been

written to him by the Zonal Office. He also denied having received the show cause notice, to which reference was made in the charge-sheet. The

property returns for the years ending 31st March, 1988 and 31st March, 1989, it was asserted, had been personally submitted by him, at the Zonal

Office at New Delhi, whereas the property returns for the years ending 31st March, 1990, was, submitted by him at the Zonal Office, Bombay. As

such, contending that there was no substance in either of the charges against him, the petitioner prayed that the proceedings be dropped.

5. Apparently finding the petitionerâ?s response to be unsatisfactory, the Bank informed the petitioner, on 30th November, 1991, that a departmental

inquiry was being initiated against him, on the charges contained in the aforementioned charge-sheet dated 15th October, 1991.

6. According to the petitioner, the respondent advised the petitioner to get himself medically examined by a doctor to be nominated by the Indian High

Commissioner in Canada, to which, too, he agreed, as communicated vide letter dated 28th January, 1992 addressed to the Bank. No response,

submits the petitioner, was received to the said communication.

7. Vide letter dated 5th February, 1992, the petitioner sought to resign from his job, and prayed for waiver of the stipulated notice period of three

months, as a specific case.

8. Without responding to the said letter of resignation, an Inquiry Officer (hereinafter referred to as â??the IOâ?) was appointed, to inquire into the

charges contained in the charge-sheet dated 15th October, 1991. The IO found the charges, against the petitioner, not to be proved and, accepting the

recommendations of the IO, the DA, vide the following order dated, 7th October, 1993, completely exonerated the petitioner of all charges against him:

â?? O R D E R

Sh. D.S. Sohi, Senior Manager, Zonal Office, Bombay was issued a charge sheet dtd. 15.10.91 consisting of Article of charges supported by

statement of Allegations. Sh. D.S. Sohi was advised to send his reply to the charge sheet within 10 days of the receipt of the same. Since Sh. D.S.

Sohi did not reply within the stipulated time an enquiry was ordered vide Disciplinary Authority letter dated 30.11.91 and Sh. P.S. Bains was appointed

Inquiring Authority and Sh. R.S. Saini, Manager was appointed as Presenting Officer. Later on because of the transfer of Sh. R.S. Saini, Mr. V.K.

Dhawan, Manager, Z.O., Bombay was appointed as Presenting Officer vide this office letter dated 15.5.93 and Sh.D.S. Sindhar was appointed

Inquiring Authority vide this office letter dated 6.3.93 because of the transfer of earlier Inquiring Authority, Sh. P.S. Bains.

I have gone through all the records viz. chargesheet dated 15.10.91 report of the Inquiring Authority; written briefs of the Presenting Officer, final

arguments of Sh. D.S. Sohi and other documents presenting by P.O. as well as mentioned by Sh. D.S. Sohi.

While going through all the record I find that Sh. D.S. Sohi proceeded to Canada with prior permission of the bank and after obtaining â??NO

OBJECTIONâ? Certificate. His leave was sanctioned upto 6th Julyâ? 91 but he requested for the extension of leave vide his letter dated 29.6.91.

There is lot of correspondence on the subject between the bank and Sh. D.S. Sohi. Bank refused to extend the leave but Sh. D.S. Sohi did not return

to join the duties on medical grounds and also submitted medical certificate from Dr. Paramjit Singh Aulak. Finally he was asked to produce himself

before a doctor to be nominated by the Indian High Commission. But before contacting Indian High Commission. But before contacting Indian High

Commission for his medical checkup as suggested by Indian High Commission vide their letter dated 21.04.92, Sh.D.S. Sohi sent his resignation letter

dated 5.2.92.

It is entirely the prerogative of management to accept or reject the leave and leave cannot be demanded as matter of right. But in this case

considering all the circumstances and the medical certificate submitted by Sh. D.S.Sohi I agree with the findings of the Inquiring Authority and come

to the conclusion that benefit of doubt may be given to Sh. D.S.Sohi.

As such I agree to the findings that charge is not proved.

Further with reference to the allegation regarding non submission of property returns by Sh. D.S. Sohi, I agree to the findings of Inquiring Authority

and have come to the conclusion that charge is not proved. From the record and documents it is inferred that he submitted the P.R. for the year

31.03.88. P.R. as on 31.3.90 was due from him which he undertook to submit within a weekâ?s time from joining the duties after returning from

Canada. But since he has resigned there is no question of his further joining his duties.

As such since charges do not stand proved I am of the opinion that Sh. D.S. Sohi should be exonerated and as per Regulation 7 sub-regulation 4 I pass

the order exonerating Sh. D.S. Sohi of the charges alleged against him vide charge sheet dated 15.10.91.

Sd/-

7.10.93

Deputy General Manager

(Disciplinary Authority)â??

9. Despite his exoneration, by the DA, of the charges contained in the charge-sheet dated 15th October, 1991, no action was taken on the

petitionerâ??s request for resignation, as contained in his letter dated 5th February, 1992.

10. Rather, on 9th March, 1995, a second charge-sheet was issued to the petitioner, which, according to the petitioner, was received by him on 15th

June, 1995. This charge-sheet contained allegations against the petitioner, relating to five bills, submitted by one M/s Rajendra Bros., which, it was

alleged, the petitioner had entered in the wrong ledger, resulting in exchange loss of Rs.Â 7,96,865/-.

11. Inasmuch as the petitioner has not chosen to challenge either these proceedings or the order that ultimately came to be passed thereon, it is not

necessary to delve into the specifics of the inquiry proceedings that followed on the said second charge-sheet dated 15th June, 1995. Suffice it to state

that the IO, appointed in the said proceedings, vide Inquiry Report dated 20th December, 1997, held the charge against the petitioner, as contained in

the charge-sheet dated 15th June, 1995, not to have been proved come about that the DA, in his order, dated 21st July, 1998, noticed the exoneration

of the petitioner, by the IO, in his Inquiry Report but went on to hold, nevertheless, as under:

â??Considering all the points, I do not find the C.S.O. the guilty of the Charges/ Allegations leveled against his vide charge sheet dated 09.03.95, but I

find that C.S.O. was negligent in taking appropriate steps to inform the factual position of the case to HEAD OFFICE well in time. So I award

punishment of minor penalty of CENSURE terms of Punjab & Sind Bank Officer Employees (Discipline and Appeal) (Amendment) Regulation 1981

which shall met the ends of justice.â??

12. This decision of the DA, in my view, may not be legally sustainable for two reasons; firstly, that it was not permissible for the DA to return an

adverse finding, against the petitioner, without, in the first instance, placing on him on notice in that regard, as held by the Supreme Court in Narayan

Mishra V. State of Orissa, 1969 (3) SLR 657 and Yoginath D Bagde v. State of Maharashtra, 1999 (7) SCC 739 and secondly, that, having once held the charges against the petitioner, as contained in the charge-sheet issued to him, not to have been proved, can a there could be no question of

awarding any penalty to the petitioner, even if it were a censure. The petitioner, however, has not chosen to challenge the order dated 21st July, 1998,

or the penalty of censure awarded to him thereby. As such, no occasion arises, for this court to interfere with the said order, which may be regarded,

therefore, as having attained finality.

13. On 5th October, 1998, and 5th November, 1998, the petitioner again represented, to the respondent, requesting that his resignation can tendered as

far back as on 5th February, 1992, be accepted, in view of the conclusion of all inquiry proceedings against him, and his exoneration, on merits, therein.

14. OnÂ 13thÂ Â February,Â 1999,Â theÂ BankÂ wroteÂ toÂ theÂ petitioner, informing him that â??due to administrative reasons and

pending criminal proceedings against you, resignation tendered by you is declined by Competent Authorityâ?, and advising the petitioner to report the

Zonal Office, Bombay.

15. The petitioner responded vide letter dated 10th April, 1999, pointing out that there were no criminal proceedings pending against him and that he

had been summoned on 14th September, 1995, in RC-8/85-5 IO (X), only as a witness. He pointed out that another employee, Mr. Sushil Vig, who had

also been summoned as a witness had submitted his resignation, which was accepted by the Bank. As such, the petitioner reiterated his request for

acceptance of the resignation submitted by him.

16. This, the petitioner would submit, resulted in the issuance, to him, of a third charge-sheet, dated 15th July, 1999, styled as a show cause notice, the

proceedings in which have been called into question by the petitioner in this writ petition, terming them to be utterly illegal and capricious in nature.

17. I am inclined to agree.

18. The Show Cause Notice, dated 15th July, 1999, may be reproduced as under:

â??ZONAL OFFICE

JAYANT PALEKAR MARG, WORLI, MUMBAI 400 018

Phones: 4947007

Ref: ZO/WS4/IR/DSS/99179 Dated: 15.07.1999

UPC

Shri Dalbir Singh Sohi,

8232, NECHACKO DRIVE,

DELTA BC,

CANADA V4C 3x3

Dear Sir,

Reg: Your unauthorised absence from Bank

We are referring to a letter dated 13.02.1999 of Chief Manager, H.O. (Personnel) Dept., New Delhi whereby it was informed to you that the

resignation tendered by you was declined by the Competent Authority. You are also advised to report for duty is at Zonal Office, Mumbai.

It has been observed that you have been absent in yourself from duties since 07.07.91 and are avoiding the resumption of duties on one pretext or

other. Please note that you were permitted to visit abroad from 07.05.91 206.07.91 only. Your stay beyond this period is unauthorised.

It appears that you have taken some outside employment due to which, you are not resuming duties.

You have also failed to submit your property Return for the period 31.03.92 to 31.03.99.

Your unauthorised absence is also hampering the banks work.

Your above acts together with wilful defiance to the instructions of resuming duties are acts of misconduct in terms of Punjab & Sind Bank Officer

Employees (Conduct) Regulations 1981.

You are advised to show cause within 15 days from date of receipt of this letter, as to why disciplinary action should not be taken against you for your

above acts of misconduct under Regulation 3(1), 6, 13, 20(1) & (2) of Punjab and Sindh Bank officers Regulations, 1981. If you failed to submit your

reply within the stipulated period, it will be presumed that you have nothing to say in this regard and accordingly, we shall proceed further for taking

disciplinary action against you in terms of Punjab and gaps in the Bank Officer Employees (Discipline and Appeal) Regulation, 1981.

Also, you are hereby again advised to report for duty is at Zonal Office, Worli Mumbai within 15 days from the receipt of this letter.

Yours faithfully,

Sd/-

Dy. General Managerâ??

19. The petitioner responded vide letter dated 30th July, 1999, drawing the attention of the respondent to the earlier orders dated 7th

October, 1993 and 21st July, 1998, passed by the disciplinary authority. He also submitted that he had resigned on 5th February, 1992, which fact had

been noted, by the disciplinary authority in his order dated 7th October, 1993. He denied the fact that he was absenting himself unauthorisedly from

duty.

20. Apparently rejecting the above representation of the petitioner, Memorandum dated 25th September, 1999 (hereinafter referred to as â??third

charge-sheetâ?), was issued, by the respondent, initiating disciplinary proceedings against the petitioner, in terms of the Punjab & Sind Bank Officer

Employeesâ?? (Discipline and Appeal) Regulations, 1981.

21. The Articles of Charges and Statement of Allegations, constituting Annexure-I and II to the said charge-sheet, merit reproduction, in extenso, as

under:

â?? Article of Charges

Annexure-I

1) Sh. D.S.Sohi, Sr. Manager Zonal Office, Mumbai has been absenting himself from duties since 07.07.1991.

2) HeÂ wasÂ informedÂ videÂ H.O.Â PersonnelÂ Deptt.,Â New

Delhi letter dated 13.02.1999 that his resignation from Bankâ?s service was declined by the Competent Authority. He was also advised to report at

Zonal office, Mumbai but he has failed to do so.

3) He was permitted to leave his place of posting and was allowed to visit Canada from 07.05.1991 to 06.07.1991. He has been away from his station

of posting unauthorisedly w.e.f. 07.07.1991.

4) Sh.D.S.Sohi, Sr. Manager has failed to submit his statement of Property Return as on 31.03.1992 to 31.03.1999.

The above acts of Sh.D.S.Sohi tantamount to acts of misconduct in terms of Clause No. 3(1), 3(2), 13 (1), 13(2) and 20 of Punjab & Sind Bank

Officer Employees (Conduct) Regulation, 1981 to be read with Clause 24 of said Regulation.

Sd/-

Zonal Manager

Disciplinary Authority

Statement of Allegations

(Annexure-II)

1) Sh.D.S. Sohi, Sr. Manager, Zonal Office, Mumbai, was sanctioned Privilege Leave upto 06.07.1991 to visit Canada. He subsequently sought for

extension of leave for 30 days on medical grounds without submitting medical certificate, vide his letter dated 29.06.1991 and 28.07.1991. Accordingly,

his request was declined vide Zonal Officer letter dated 27.08.1991 and was informed that his absence from duties was unauthorized. In the same

letter, he was informed that action shall be taken if he fails to report for duties. He subsequently tendered a resignation from Bankâ??s service. He was

informed by H.O. Personnel Deptt., New Delhi vide letter dated 13.02.1991 that his resignation from Bankâ?s service was declined by the Competent

Authority. But he failed to do so thereby willfully disobeying the reasonable and lawful orders of the superior office.

2) He was permitted to leave his place of posting by allowing him to visit Canada from 07.05.1991 to 06.07.1991. He has been away from his station

of posting unauthorisedly w.e.f. 07.07.1991.

3) Sh.D.S.Sohi, Sr. Manager has failed to submit Property Return as on 31.03.1992 to 31.03.1999.â??

22. The petitioner responded, vide letter dated 5th October, 1999, drawing the attention of the disciplinary authority to the various communications,

between him and the respondents, theretofore. The allegations in the charge-sheet were also denied.

23. Despite the above response of the petitioner, an IO was appointed, to enquire into the allegations contained in the aforementioned third charge-

sheet. The inquiry report, dated 28th January, 2001, of the said IO,Â reads as under:-

â??The Zonal Manager,

Disciplinary Authority,

Punjab & Sind Bank,

Zonal Office,

Mumbai-18.

Dear Sir,

Reg: Sh. Dalbir Singh Sohi, Sr. Manager.

I was appointed E.O. vide Z.O. letter dated 28.10.1999 to conduct an enquiry into the alleged charges against the above named official. Accordingly

he was directed to appear before me on 17.11.1999 at 4.00 P.M. in my office for preliminary enquiry and the P.O. Sh. R.S. Gupta was directed to

present the managementâ??s case.

The enquiry proceeding were conducted on 17.11.1999 and 28.01.2000, copies of the proceedings are enclosed herewith. Both the proceedings were

conducted against the C.S.O. in absentia.

The charges against the C.S.O. inter-alia area as under:

1. That Sh. Dalbir Singh Sohi, Sr. Manager, Z.O. Mumbai has not submitted his property returns as on 31.03.1992 to 31.03.1999.

2. That Sh. Dalbir Singh Sohi was sanctioned leave from 07.05.1991 to 06.07.1991. He applied for extension of leave for 30 days on medical grounds

without submitting medical certificate vide his letter dated 29.06.1991 and 28.07.1991. His request was declined and he was directed to report for

duties at Z.O., Mumbai. Instead of joining the duties he submitted his resignation from the bank service which was declined by competent authority

and he was informed accordingly vide H.O., Personnel Department letter dated 13.02.1999.

He has not jointed the duties so far and is thus absenting unauthorisedly w.e.f. 07.07.1991.

The charges are a matter of fact and same stand substantiated merely by the fact that he has not joined his duties which he was supposed to do once

his leave was not sanctioned and also when his resignation was not accepted. As he continues to be the employee of the bank, C.S.O. is bound to

submit his property returns, which he has failed to do.

From the proceedings and the arguments given by the P.O. the charges levelled against the C.S.O. stand proved.â??

24. Following on the above inquiry, the DGM, as disciplinary authority, issued order dated 7th February, 2000, the operative portion of which reads

thus:

â?? Allegations have been proved against Sh. D.S. Sohi, Sr. Manager to establish the misconduct as per Regulation 3(1), 13(1 & 2) and 20 of Punjab

& Sind Bank officer Employeesâ?? (Conduct) Regulation, 1981 read with regulation 24 of the said Regulations.

Looking into the seriousness of allegations which have been proved against Sh. D.S. Sohi, Sr. Manager, I am of the considered opinion that it is not at

all desirable to keep him in service of Bank as it would be prejudicial to the interests of Bank. Therefore, in my opinion that the ends of justice would

be duly met by awarding him the punishment it of â??Dismissalâ?? from bankâ??s Service.

I, therefore, in my capacity as Disciplinary Authority, hereby impose the punishment of â??Dismissalâ? from bankâ?s Service which shall not be

disqualification for future employment, on Sh. Dalbir Singh Sohi, Sr. Manager, with immediate effect within the meaning of Regulation 4 (i) of Punjab

& Sind Bank Officer Employees (Discipline & Appeal) Regulations, 1997 (Amended).â??

25. TheÂ petitionerÂ appealed,Â againstÂ theÂ aboveÂ orderÂ datedÂ t7h February, 2000, to the General Manager, H.O. (Personnel),

Department of the respondent Bank. It was pointed out, by the petitioner, in the said appeal, that he had been vexed twice for the same alleged

â??misconductâ? of which he had been completely exonerated once. He denied all the allegations against him, and prayed that the order dismissing

him from service be recalled.

26. Vide corrigendum dated 6th June, 2000, the DGM modified the order, dated 7th February, 2000 (supra), punishing the petitioner for the misconduct

perceived to have been committed by him, by substituting the word â??dismissalâ?? as contained in the said order with the word â??removalâ??.

27. Vide order dated 18th August, 2000, the appeal of the petitioner was dismissed by the DGM (Personnel) purporting to act as â??appellate

authorityâ??.

28. This Court is unable to fathom how a DGM could be an appellate authority over an order of another DGM.

29. Be that as it may, the petitioner filed an application to the General Manager, H.O. (Personnel) Department of the respondent Bank for review of

the aforementioned appellate order dated 18th August, 2000. Inasmuch as the averments contained in the said review application were substantially similar to those urged by him before the authorities below, it is not necessary to burden this order by any detailed reference thereto.

30. Vide order dated 15th June, 2002, the General Manager (Personnel) in his capacity as reviewing authority, rejected the above review application

of the petitioner and upheld the orders passed by the disciplinary authority and appellate authority.

31. Aggrieved thereby, the petitioner is before this Court.

32. To this Court, the manner in which the Bank has treated the petitioner is appalling, to say the least. The petitioner has obviously been hounded.

Once the disciplinary authority had, vide order dated 7th October, 1993, exonerated the petitioner of the charge of unauthorized absence after 6th July,

1991, there could be no question of the same charge, forming subject matter of a fresh proceeding against the petitioner. It is also seen, from the order

dated 7th October, 1993, that the petitionerâ?s resignation has been accepted as a matter of record. In fact, the said order states that â??since he has

resigned there is no question of his further joining his duties.â? This is, ex facie, contrary to the observation, in the inquiry report dated 28th November,

2001 (supra), that the petitioner continued to be the employee of the Bank and was, therefore, required to submit his property returns.

33. That the entire exercise of issuance of the third charge-sheet, as well as all proceedings following thereupon, was tainted by malice in law as well

as on facts, and targeted at removing the petitioner from the establishment of the Bank, any which way, is also apparent from the summary nature of

the inquiry report, dated 28th January, 2001, as well as the total non-application of mind, by the disciplinary authority, the appellate authority as well as

the reviewing authority, to the petitionerâ??s repeated references to the earlier proceedings against him, which had culminated in his exoneration.

34. Resultantly, this writ petition is allowed. The order, dated 7 th February, 2000, read with corrigendum dated 6th June, 2000, whereby the petitioner

stood dismissed from service, as well as the appellate order dated 18th August, 2000 and review order dated 15th June, 2002, are quashed and set

aside.

35. The request of the petitioner, for being permitted to resign from his job, shall be treated as having been accepted by the respondent, on the date of

his resignation i.e. 5th February, 1992.

36. Should the petitioner be entitled to any benefits consequent to this judgment, they shall be disbursed to the petitioner within a period of two weeks from the date of receipt, by the respondent, of a certified copy of this judgment.

37. The petitioner shall be entitled to costs from the respondent, which are quantified at Rs. 50,000/-.

