(1995) 08 MP CK 0038

In the Madhya Pradesh High Court

Case No : M.P. No. 521 of 1992

Dinesh Kumar Agarwal APPELLANT

Vs

Bank of India and Others RESPONDENT

Date of Decision : 07-08-1995

Acts Referred:

Bank of India Officer Employees (Discipline and Appeal) Regulations, 1976 — Regulation 12(1), 14, 14(2), 3

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 19

Citation : (1995) JLJ 578

Hon'ble Judges : Fakhruddin, J;D.M. Dharmadhikari, J

Bench : Division Bench

Advocate : N.P. Mittal, for the Appellant; O.P. Sharma, for the Respondent

Final Decision : Allowed

Judgement

D.M. Dharmadhikari, J.—The Appellant is employed as officer in the Respondent Bank of India and, at the relevant time, was posted at Guna. By order passed on 19.2.1987, which was modified by order dated 7.8.1987, he was placed under suspension, firstly in contemplation of disciplinary proceedings against him and thereafter also because of the institution of a criminal case against him in a Special Court under the prevention of Corruption of Act and under the provisions of the Indian Penal Code.

2. He challenged the orders suspending him by Writ Petition No. 521 of 1992 which has been decided by the learned Single Judge of this Court by order under appeal dated 21.10.1994. The learned Single Judge rejected all the contentions advanced against the validity of orders of suspension, by the Appellant. The only relief granted to him was a direction issued to the Bank to review the order of suspension in the light of the guidelines issued by the Bank and because of the fact that the suspension period has been unduly long.

3. In this Letters Patent Appeal, Shri N.P. Mittal, learned Counsel appearing for the Appellant, assails the order of the learned Single Judge mainly on the

following grounds which we shall deal one after the other.

4. The first contention advanced is that the suspension order passed on 19.2.1987 has been passed by the Officiating Regional Manager who is not "the Competent Authority" as prescribed under the Bank of India Officers Employees (Discipline and Appeal) Regulations, 1976, framed u/s 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (hereinafter referred to as the "Regulations" and the "Act" respectively. In support of the above contention the learned Counsel invited attention of this Court to the definitions of "Competent Authority" and "Disciplinary Authority" under Regulation 3(f) and 3 (g) respectively. The "Competent Authority" has been defined to mean the authority appointed by the Board for the purposes of the Regulations. The "Disciplinary Authority" has been defined to be the authority specified in the Scheduled to the Regulations which is competent to impose on an officer employee any of the penalties specified in the Regulations. A distinction is sought to be pointed out that "Disciplinary Authority" is different from "Competent Authority" and the order of suspension can be passed only by the Competent Authority as provided in Regulation 12(1) of the Regulations. The learned Counsel has elucidated his above contention on the competence of Officiating Regional Manager to pass the order of suspension by referring to the Schedule to the Regulations which was brought into force with effect from 1.7.1982. In Col. 3 of the said Schedule, for Officers in Scale I, working at the Branches, the ''Disciplinary Authority'' and the ''Competent Authority'' under Regulation 3(g) and 3 (f) and 12 has been shown as ''Regional Manager incharge of the concerned Region.'' It is then pointed out that the above Schedule was superseded by the Branch Circular No. 81/273, dated 7th October, 1987 (marked as Annexure P/25 with the main Petition) and in the proper colum of the Schedule for Officers in Scale I, the ''Competent Authority'' and ''Disciplinary Authority'' have now been described as only ''Regional Manager'' instead of ''Regional Manager in-charge of the concerned Region.'' Two argument built by reading the above two circulars is that the Officiating Regional Manager was not the Competent Authority and could not have passed the impugned orders of suspension. In place of the above Circular, reliance is placed on a document at page 50 of the Paper Book which shows that for all Officers Employees, the Competent Authority prescribed is General Manager or any other Executive appointed by the Board. It is contended that it is only the Regional Manager or any other Executive appointed by the Board which alone could have placed the Appellant under suspension. The order of the learned Single judge is criticised by submitting that the circulars above-mentioned have been misinterpreted and the learned Single Judge has placed reliance on the following Note below the Circular dated 7.10.1987 (at p. 63 of the Paper Book). The relevant Note reads as under:

Where any Disciplinary or Appellate Authorities as mentioned above is not in position to function then appropriate Reviewing Authority of a concerned officer, may nominate appropriate officers in the same scale to function as such Disciplinary or Appellate Authority.

It is argued that the above-mentioned Note also stood repealed when the Circular itself was repealed. We find no merit in the contention adavanced on behalf of the Appellant on the question of competence of Officiating Regional Manager to place him under suspension. In both the, circulars, at the appropriate column, one common authority has been prescribed to act as Disciplinary Authority and Competent Authority for the purposes of the Regulation. That is clear from the heading of the Form in the Schedule. It is true that in one circular, the power conferred is on the Regional Manager in-Charge and in the other circular, it is the Regional Manager. In our opinion, the Officiating Regional Manager for all practical purposes is the Regional Manager and the schedule has to be reasonably construed to hold that the Officiating Regional Manager who exercises all powers of the Regional Manager during the period of his incumbency is deemed to be authorised to act as the Competent Authority. The contention advanced that the Officiating Regional Manager could not pass the order of suspension is, therefore, rejected.

5. The second submission advanced is that the order of suspension is liable to be revoked only on the ground that it had remained in force for an unduly long period of almost now eight years. It is submitted that the criminal case instituted at the instance of the C.B.I. has not materially progressed for no fault on the part of the Appellant. The direction issued by the learned Single Judge for reviewing the order of suspension by the Authorities of the Bank has also not borne any fruit because for no justifiable reasons, request to revoke the order of suspension has been turned down. It is submitted that continuance of suspension for such long period is per se against the Regulations, unjust and unduly harsh.

6. Learned Counsel, Shri O.P. Sharma, appearing for the Bank, in reply, submitted that the Appellant was placed under suspension, both contemplating a disciplinary action against him under the Regulations as also because of the pendency of the criminal case. As the criminal case was instituted through the C.B.I., the Bank did not proceed in any disciplinary enquiry against the Appellant. The case pending before the Criminal Court is being prosecuted by the C.B.I. through the Special Prosecutor and the Bank has no control over the proceedings. It is not possible for the Bank to bring that Criminal trial to an end within a reasonable period. The Appellant should have made the C.B.I. as a party to the Writ Petition and should have sought necessary directions against the C.B.I. and the Criminal Court.

7. Having given our thoughtful consideration to the contentions advanced on the above grounds by the learned Counsel at the Bar, we are of the opinion that the submission made on behalf of the Appellant has great force. The long period of eight years, in itself, justifies revocation of the order of suspension. It is true that the bank has no control over the proceedings pending in Criminal court, but nothing prevents the bank from initiating disciplinary enquiry, if the act committed by the Appellant also amounts to service misconduct. We find no legal impediment for the Bank in proceeding against the Appellant under the

Regulations by issuing a charge-sheet and holding an enquiry. The allegations against the Appellant are that as the Bank Officer, he indulged in fraudulent opening of accounts and withdrawal. That may amount to an offence under the Indian Penal Code as also under the Prevention of Corruption Act, but the same acts or omissions on the part of the Appellant also constitute service misconduct for which he can be departmentally proceeded against under the Regulations. He may not be charge-sheeted on same set of facts for committing the offence, but nothing prevents the Bank from holdings disciplinary enquiry for alleged service misconduct. In fact, what we find from the contents of the two impugned orders of suspension is that the first one was passed in contemplation of the disciplinary enquiry and in the second, the same order is modified to say that it is both in contemplation of enquiry and because of the pendency of criminal case. The Bank definitely is at fault in allowing the suspension to continue for such a long period and in not either reviewing or revoking it despite the direction made by the learned Single Judge. Such-a long suspension cannot be countenanced by the Court as it, in itself, amounts to imposition of punishment without proof of any guilt. The rule of reasonability also expects the Bank as employer not to keep its employee under suspension for an unduly long and indefinite period. We are supported in our view by the decisions on which the counsel for the Appellant placed reliance. See, Ramoo Ramesh Vs. Andhra Bank, Amitva Mukerjee v. State of Rajasthan 1995 (I) SLR 575 (Raj.) and Kamal Singh Ghugtyal Vs. Union of India (UOI) and Others,

8. The learned Counsel for the Bank also submitted in the course of his argument that there is no provision in the Regulations to revoke the suspension and reinstate a Bank officer when he is facing a criminal trial for alleged commission of a serious offence. No doubt, it is not easy for the Bank to reinstate the Appellant and assign him a responsible work and position when there are serious allegations of commission of criminal offence and misconduct. For the reasons aforesaid, however, we are of the opinion that the suspension having continued for an unduly long period, has to be revoked.

9. The last contention advanced on behalf of the Appellant is about his claim for Subsistence Allowance. It is contended that he is not being paid the Subsistence Allowance on the revised scale of pay to which he is entitled under Regulation 14. The learned Counsel appearing for the Bank disputes the above claim and submits that the Appellant is being paid Subsistence Allowance as per Regulation 14 on the basis of the pay which he was receiving on the date of his suspension.

10. In order to decide the question of due entitlement of Subsistence Allowance to the Appellant, it is necessary to reproduce and construe the provisions of Regulation 14 which are as under:

14. Subsistence allowance during suspension:

(1) An Officer employee who is placed under suspension shall, during the period of such suspension and subject to sub-regulation (2) to (4) be entitled to receive

payment from the bank by way of subsistence allowance on the following scale, namely:

(a) Basic Pay:

(i) For the first three months of suspension 1/3 of the basic pay which the officer employee was receiving on the date prior to the date of suspension irrespective of the nature of enquiry,

(ii) For the subsequent period after 3 months from the date of suspension. Where the enquiry is held departmentally by the bank, 1/2 of the basic pay, the officer employee was drawing on the date prior to the date of suspension and

(2) Where the enquiry is held by an outside agency 1/3 of the basic pay for the next three months and 1/2 of the basic pay for the remaining period of suspension.

Reading the above Regulation carefully, what we notice is that under sub-regulation (1) (a) (i) the expression used is "for the first three months of suspension 1/3 of the basic pay which the officer employee was receiving on the date prior to the date of suspension irrespective of the nature of enquiry.

11. Compared to the above sub-regulation, the language of sub-regulation (2) is as under:

(2) Where the enquiry is held by an outside agency 1/3 of the basic pay for the next three months and 1/2 of the basic pay for the remaining period of suspension.

From the above-quoted portions of the sub-regulation, it is to be noticed that for sub-regulation 1 (a) (i), the Subsistence Allowance is to be calculated on 1/3 of the basic pay which the employee was receiving on the date prior to the date of suspension. The said condition or expression is, however, absent in sub-regulation (2) where the enquiry is held by an outside agency, as is the present case. Here, the enquiry is being held by the C.B.I. in a Criminal Court. The Appellant is, therefore, entitled to be paid Subsistence Allowance for the period after three months at the rate calculated on the basis of the basic pay as revised from time to time.

12. Consequently, the appeal succeeds and is allowed. Instead, we revoke the two orders of suspension prospectively (Annexure P/l and P/2 to the main petition) and declare that they would no longer be effective from today. He is directed to be reinstated forthwith on a job and post suitable to his present circumstances. It is further made clear that the validity or otherwise of the suspension orders for the period already undergone would be dependent upon the decision of the criminal trial and/or the disciplinary proceedings, if any, instituted against the Appellant. For the period of suspension, already undergone, the Appellant is held entitled to subsistence allowance, calculated on the basis of his revised scale of pay under Regulation 14(2) of the Regulations.

The arrears of subsistence allowance, calculated on the basis indicated above be paid to the Appellant within a period of two months from today. We, however, grant liberty to the Respondent Bank and its authorities to hold, if deemed desirable, disciplinary enquiry against the Appellant in accordance with the provisions of the Regulations.

13. In the circumstances, we also leave the parties to bear their own costs of this appeal.

