
(2005) 06 MP CK 0030
In the Madhya Pradesh High Court
Case No : W. P. 2515 of 1997

Gurmit Singh Vilku

APPELLANT

Vs

Punjab and Sind Bank and Others

RESPONDENT

Date of Decision : 21-06-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Penal Code, 1860 (IPC) — Section 408, 409, 419, 420

Citation : (2005) 3 MPLJ 376

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : Sanjay Sanyal, for the Appellant; J.P. Sanghi and Vikram Sharma, for the Respondent

Judgement

A.K. Shrivastava, J.

By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the validity of Annexure-P-33 and P-36 dated 29-2-1996 and 6-2-1997, respectively, whereby petitioner has been dismissed from service. Petitioner has further prayed for reinstatement with all ancillary benefits.

The case of petitioner is that he was appointed on the post of Clerk in Khar Branch, Mumbai of respondent No. 1 on 3-4-1978 where he worked upto February, 1984. Thereafter he was transferred to Jabalpur Branch and was assigned duties on Teller counter of the Branch in 1985. The working of Teller System is governed by directions given in Annexure-P-1. On June 16, 1990 the petitioner was transferred to Branch Office Maharajpur, Jabalpur. Vide letter dated 23-6-1990 (Annexure-P-2) he was placed under suspension. The Branch Manager of the Bank (respondent No. 4) lodged a report against the petitioner to the State Bureau of Investigation for Economic Offences, Bhopal on 26-5-1990. According to petitioner, Bureau came to the conclusion that no offence was made out in order to investigate the matter. Thereafter, respondent No. 4 lodged an

FIR with the Police Station Omti, Jabalpur on 5-2-1991 against petitioner and on the basis of which a case for offences under sections 420, 419, 408, 409, 467, 468, 171, 201/34, Indian Penal Code was registered. A copy of the FIR is Annexure-P-4.

This fact is no more in dispute that petitioner was acquitted by the Judicial Magistrate First Class, Jabalpur on 30-10-2001.

Respondent No. 2 issued a charge-sheet against the petitioner on 22-2-1993 framing following charges:-

5(d) willful damage or attempt to cause damage to the property of the bank or any of its customers;

5 (j) doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss;" According to petitioner, relations of the Bank and its employees are governed by the Bi-Partite Settlement. Clause 19.4 thereof has been quoted in the memorandum of petition.

The petitioner submitted reply Annexure-P-8 on 18-12-1993 refuting the charges. Thereafter petitioner moved an application before the enquiry officer for staying proceedings in view of Clause 19.4 (Annexure-P-9) on 12-1-1994. Petitioner also sought permission to get himself defended by a lawyer, but it was refused to the petitioner vide telegram Annexure-P-10. The petitioner made several requests to stay departmental proceedings, but it was not stayed.

The departmental enquiry was in regard to the withdrawals from Saving Bank Account No. 41 of one Mr. Nand Singh, who expired on 27-12-1981. Petitioner made demand to furnish copies of 17 documents for the purposes of his defence vide his application dated 22-7-1994 (Annex.P-16), but the copies were not supplied to him. It was alleged that petitioner paid Rs. 12,000/- as a Teller from the account of said Nand Singh between 17-2-1986 and 17-4-1986. It was also alleged that petitioner had forged the signatures of the deceased on the withdrawal vouchers/cheques. According to petitioner, he also made demand to supply a copy of report of Hand Writing Expert in this regard. The presenting officer objected to file copies of document referred to at No. 4, 5, 7, 8 and 17 saying that they are irrelevant. The relevant order-sheet is Annexure-P-17. According to petitioner on bare perusal of Annexure-P-18 which is the proceeding dated 17-1-1995 it is revealed that presenting officer did not supply copies of the relevant documents demanded by petitioner as per Annex.P-16 and specifically objected to supply copy of report of Handwriting Expert. According to petitioner, despite it was directed by the enquiry officer to furnish copies of the documents, they were not supplied to the petitioner, specially the report of the Handwriting Expert. In that regard Annex.P-19 has been filed which is copy of the proceeding dated 17-2-1995.

It has been stated in the petition that a witness IPS Chandok was examined on 17-2-1995 and he deposed that he made an entry in the ledger-sheet of SB

Account No. 41 that Shri Nand Singh died on 27-12-1981. According to petitioner, the Law Circular No. 3 (Annex.P-20) describes the procedure to be adopted in respect of the accounts of the dead persons. This procedure was not followed by respondent No. 4. The letter of intimation of the death of Nand Singh or his death certificate has not been produced during the departmental proceedings despite demand was made by petitioner.

The contention of the petitioner is that respondent No. 1 uses loose ledger system. The ledger sheets are changed after every six months and new ledger sheets are prepared carrying forward the closing balance of the last ledger sheet of each and every account holder. The old ledger sheets are kept in the record room and the Teller has no access to them. Despite demands, the copy of the old ledger sheet in which disputed entries in regard to death of Nand Singh were made, were not made available and supplied to the petitioner during departmental enquiry because according to the petitioner in that old ledger sheet factum of death of account holder Nand Singh was not mentioned.

It has also been set-forth in the petition that the ledger sheet on which said endorsement about the death of account holder Nand Singh is made, pertains to a period between June, 1980 and 10-6-1982. The last balance in this Balance (Ledger) Sheet is shown to be Rs. 4,391.78 which would mean that there has been deposits after the death entry in the account otherwise payment of Rs. 12,500/- could not be made in the year 1986.

The contention of learned counsel is that since the old ledger sheet in which endorsement about the death of account holder was made, was not made available to the petitioner when the petitioner was on duty on Teller, therefore, he cannot be made responsible for the payment. Apart from this, it has also been submitted by Shri Sanyal, learned counsel appearing for the petitioner that there is nothing on record to show that on which date the endorsement in the relevant ledger, about the death of deceased Nand Singh, was made. The learned counsel by placing reliance on the decision of the Supreme Court in the case of State of U.P. Vs. Shatrughan Lal and Another, has submitted that since copies of the relevant documents were not supplied to the petitioner, the departmental enquiry is vitiated. Learned counsel has further placed reliance on the decision of this Court in the case of Sahab Singh Sengar v. State of M.P., 2005 (2) MPU 132 and has submitted that the present case is of no evidence and, therefore, the order of dismissal from service of petitioner is bad in law. Shri Sanjay Sanyal, learned counsel for petitioner by placing reliance on the decision in the case of Union of India (UOI) and Others Vs. Jaipal Singh, has submitted that petitioner has been acquitted by the Court of JMFC, therefore, he is entitled to be reinstated with full back wages.

Shri J. P. Sanghi, learned senior counsel for the respondents has submitted that a sum of Rs. 12,500/- was withdrawn from the Teller counter during the period in which the petitioner was serving on that counter and, therefore, petitioner was responsible for making payment from the account of a dead person. So far as the

procedure of the ledger work, averments about which have been mentioned in Para 5.12 of the petitioner, there is no specific reply in that regard. In Para 13 of the return filed on behalf of respondents it has been pleaded that though the petitioner made demand of copies of the 17 documents vide his application dated 22-7-1997 (Annex.P-16), but these documents were irrelevant for the purpose of the departmental enquiry. It has also been pleaded that the demand made by petitioner for supply of copies of the report of the Handwriting Expert and other documents was not justified and, therefore, they were not supplied to him.

After having heard learned counsel for parties, I am of the view, that this petition deserves to be allowed.

It is no more in dispute that petitioner, inter alia made demand for the supply of report of the Handwriting Expert, but the copy the same was not supplied to him. On a bare perusal of Annexure-P-33, the order of the disciplinary authority, it is revealed that report of the Handwriting Expert was taken into consideration and copy of the same was not supplied on the ground that the proceedings are of quasi-judicial nature and the authorities are not required to go into the very minute details of the case. The view of this Court is that though the disciplinary authority rightly held that the departmental proceedings are of quasi-judicial nature, but at the same time, since copies of relevant documents were not supplied to the petitioner, the finding on the basis of the opinion of the Handwriting Expert could not have been given. The matter would have been definitely different if the report of the Handwriting Expert would not have taken into consideration. Since it has been taken into consideration by the disciplinary authority, according to me, it was mandatory on the part of the Management to have supplied the copy to the delinquent-petitioner, but the same was not given to him despite application (Annexure P-16) was submitted by him. In this regard I may rely on the decision of the Supreme Court in the case of Shatrughanlal (supra).

Though the Branch Manager IPS Chandok has stated that in the ledger sheet of Saving Bank Account No. 41 of Mr. Nand Singh it has been mentioned that he died on 27-12-1981 but the crucial thing is totally lacking from his statement that on which date said fact was endorsed in the ledger sheet. Whether it was endorsed after the impugned amount of Rs. 12,500/- was withdrawn or earlier to it. According to me this is the crux of the matter and it cannot be side tracked lightly. In the ledger sheet, copy of which has been placed on record as Annexure-P-16-A, the only note which has been mentioned is that deceased died on 27-12-1981. Below this note, there is a signature of the person who wrote that note but, no date has been written along with the signature. Thus it cannot be said on which date said endorsement was made. The petitioner has filed Annexure-P-37 which is a letter of Handwriting Expert addressed to Superintendent of Police, Jabalpur mentioning that on the disputed vouchers the signature of deceased is not there, but it cannot be said that forged signatures were made by petitioner and for that no opinion can be given. Thus, it would be

very difficult to arrive at a conclusion that the disputed signature was made by the petitioner.

In Para 5.12 (internal page 6) of the memorandum of petition it has been specifically pleaded that respondent No. 1 uses loose ledger sheet system. The ledger sheets are changed after every six months and new ledger sheets are prepared carrying forward the closing balances of the last ledger sheet of each and every account holder. The old ledger sheets are kept in the record room and the Teller has no access to them. Despite there being crucial and specific averments in the petition, there is no specific denial by the respondents in the return. The averments of Para 5.12 of the petition are replied in Para 13 of the return, but it appears that respondents conveniently avoided to reply this material part of the pleading made in the petition. According to me, there is sufficient force in the arguments of the learned counsel for petitioner that copies of ledger sheets, which are relevant documents, were demanded by the petitioner vide Annex.P-16, but they were not supplied to him and, therefore, the departmental enquiry is vitiated.

Though scope of judicial review is very limited but if there is no evidence to the effect that petitioner was quite aware about the death of Nand Singh and thereafter he passed vouchers for its payment, according to me, he could not be made responsible. It would be relevant to mention here it again at the cost of repetition that there is total lack of evidence to the effect that endorsement of death of Nand Singh was made on which date. The date has not been written below the signature of the officer who made the said endorsement.

There is no substance in the contention of Shri Sanghi, learned senior counsel that this petition is not maintainable because earlier the petitioner filed a writ petition (M.P. No. 4409/93) against the order of his dismissal from service, and that was disposed of on 29-11-1996. On bare perusal of order of this Court passed in M.P. No. 4409/93 dated 29-11-1996 (Annex.P-35) it is gathered that at that time departmental appeal was pending before the appellate authority. This Court directed the appellate authority to decide the appeal in accordance with law and it was further observed that petitioner shall be free to take all those points which are available to him for assailing the order of disciplinary authority or the finding of the enquiry officer. Thus after dismissal of the departmental appeal, this writ petition against the order of dismissal from service, is very much maintainable.

For the reasons stated hereinabove, Annexure-P-33 dated 29-2-1996 passed by the disciplinary authority is hereby quashed and for the same reasons the order of appellate authority Annexure-P-36 dated 6-2-1997 is also hereby quashed. The respondents are hereby directed to reinstate the petitioner. The decision in the case of Jaipal Singh (*supra*) would throw sufficient light in regard to the payment of backwages. In that case the Apex Court directed to make payment from the date of acquittal. In the present case petitioner was acquitted by the criminal Court on 30-10-2001 and from this date petitioner is entitled for the

backwages. However, for the purpose of the continuity of the service, he shall be deemed to be on duty w.e.f. the date of his dismissal from service. Needless to emphasis, petitioner shall be entitled for all consequential benefits as if he would have been in service.

Resultantly, petition succeeds and is hereby allowed to the extent indicated hereinabove. The parties are directed to bear their own costs.