

(2014) 11 MAN CK 0002
In the Manipur High Court
Case No : Writ Petition (Civil) No. 447 of 2009

H. Khupzathang

APPELLANT

Vs

The Punjab National Bank

RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

Citation : (2014) 11 MAN CK 0002

Hon'ble Judges : Laxmi Kanta Mohapatra, C.J;N. Kotiswar Singh, J

Bench : Division Bench

Advocate : R.K. Nokulsana, Sr. Advocate and Y. Sanajaoba, Advocate for the Appellant; A. Deni Sharma, Advocate for the Respondent

Judgement

N. Kotiswar Singh, J.—The present writ petition has been filed challenging the impugned order of penalty dated 27.6.2009 imposed on the petitioner of removal from service with superannuation benefits and without disqualifying from future employment on the charges on completion of departmental enquiry against him.

2. The petitioner at the relevant time was serving as a Head Cashier in the Branch Office of Punjab National Bank at Imphal. He had been proceeded against in a departmental enquiry in which the following charges were labelled against him, as per the charge-sheet dated 18.11.2008:

"Charge No. 1.

You as Head cashier did not make proper record of cash details and did not maintain cash reserve register properly on regular basis and token register has not been maintained w.e.f. 01.04.07.

Charge No. 2

You fraudulently maintained less physical cash in the safe by reflecting the same in different coin columns and siphoned cash overnight from the safe.

Charge No. 3

You fraudulently maintained less physical cash balance by reflecting the difference amount in cheques (as late payment) without any details of the cheques on regular basis.

Charge No. 4

You regularly paid cash to Shri R. Sanga, CTO in the plea of late payment against cheques of customers A/C No. 01-76864 without having any valid cheque/ Payment instrument and reflected them in coin columns of cash memo register.

Charge No. 5

You paid cash to staff members on 23/02/08 against incomplete cheques and withdrawal slips which were not debited to the accounts, not passed by authorised officer and were not valid instruments for payment."

3. The petitioner submitted his written statement of defence on 15.4.2008. Though he admitted to commission of some irregularities, he pleaded that there was no malafide intention to cause any harm and damage to the Bank and also denied the charge of fraudulently maintaining cash as alleged. Thereafter, the departmental enquiry was held against him and charges were held proved on being admitted by the petitioner as recorded in the enquiry report. A copy of the enquiry report was furnished to the petitioner vide letter dated 23.3.2009 to which the petitioner submitted his reply on 26.6.2009. In the said reply, the petitioner pleaded that for the last few years an abnormal situation had been prevailing in the whole of Manipur, particularly, in Imphal with the extremist outfits active in the State on one hand and State machinery continuing their operation making life very difficult and bandhs and curfews were common incidents and instances of extortion of money by extremist outfits even from the Bank employees were common. Because of these abnormal situations prevailing, many a times certain advances had to be made against salary in a hurry under instruction from the offices. It was pleaded that though these were irregularities, there was no financial loss to the Bank and the petitioner had no malafide intention to defraud the bank.

The disciplinary authority on consideration of the enquiry report as well as the reply of the petitioner agreed with the finding in the enquiry report and imposed the penalty of compulsory retirement with superannuation benefits and without disqualifying from future employment in terms of Clause 6(b) of the BPS dated 10.04.2002 vide the order of penalty dated 27.6.2009.

4. The Bank authorities filed their affidavit-in-opposition denying the allegations made in the writ petition.

5. Heard the learned counsel for the petitioner as well as the respondents and also considered the records of the departmental enquiry as submitted by the authorities.

6. The record of the departmental enquiry so produced, however, does not

include the record of the proceedings of the departmental enquiry other than what had been reflected in the enquiry report and as such, this Court is not in a position to consider the various allegations raised by the petitioner as regards irregularities in the departmental proceeding. However, a perusal of the enquiry report would reveal that there was no defence assistant. Whether that was because of the reason that the petitioner had declined to avail any defence assistant or for the reason of not having been given any opportunity to engage defence assistant, cannot be ascertained in absence of the record of the proceeding of the enquiry which was stated to be held on 12.02.2009. The enquiry report also shows that apart from the reference to the documents, which were relied upon by the authorities, there was no witness examined on behalf of the authorities to prove the charges. This Court has also noted that the charges against the petitioner were not mere irregularities as mentioned in these charges, but there were also allegations that the petitioner had fraudulently committed these acts as mentioned in Charge No. 2 and 3.

7. It is one thing to make the allegation of committing certain irregularities but it is another thing to allege fraud which would require a higher standard of evidence. Therefore, even if the charged officer had admitted to the irregularities, admission of such by itself can not lead to the inference that such irregularities were committed fraudulently. Apart from that, what has been noted is that though the petitioner was afforded the opportunity to be heard in person before the penalty was imposed, the impugned order of penalty dated 27.6.2009 merely dealt with the finding of the enquiry report and the Disciplinary Authority did not deal with the various considerations which were required to be kept in mind while imposing penalty as required under Para 12(c) of the Bipartite Settlement. The relevant operative portions of the impugned order dated 27.6.2009 read as follows:-

"I have further examined document No. 1 to 2 and document 3 to 11 and have come to conclusion that he paid cash to staff members on 23/02/08 against 9 incomplete cheques/withdrawals. Document 3 to 11, which were not debited to account, not passed by authorised officer and were not valid instruments for payment.

Shri Khupzathang was served Show Cause giving a week's time for submitting as to why the Punishment proposed should not be imposed upon him. He was also given opportunities for Personal hearing with instruction to appear before the Disciplinary Authority on 08-06-2009 at Circle Office, Bhangagarh, Guwahati.

On going through the facts and findings of the case supported by Enquiry report, defense statement made by him & Submission given at the time personal hearing, I, decide that ends of justice would be met by proposing punishment of "Removal from service with Superannuation benefits and without disqualifying from future employment in terms of clause 6(b) of BPS dt.10-04-2002".

Therefore, what is evident is that though the disciplinary authority considered

the enquiry report for the purpose of coming to the conclusion that the charges against the petitioner were proved, there was no discussion relating to the various considerations which were required to be kept in mind while imposing the penalty of removal from service with superannuation benefits and without disqualifying from future employment.

8. As per para No. 12(c) of the Bipartite Settlement, the disciplinary authority has to take into account the gravity of the mistake, the previous record, if any, of the employee or any other aggravating or extenuating circumstances, that may exist. The said para No. 12(c) is reproduced hereinbelow:-

"12. The procedure in such cases shall be as follows:-

.....

.....

(c) In awarding punishment by way of disciplinary action the authority concerned shall take into account the gravity of the misconduct, the previous record, if any, of the employee and any other aggravating or extenuating circumstances, that may exist. Where sufficiently extenuating circumstances exist the misconduct may be condoned and in case such misconduct is of the "gross" type he may be merely discharged, with or without notice or on payment of a month's pay and allowances, in lieu of notice. Such discharge may also be given where the evidence is found to be insufficient to sustain the charge and where the bank does not, for some reason or other, think it expedient to retain the employee in question any longer in service. Discharge in such cases shall not be deemed to amount to disciplinary action."

There is nothing on record or in the impugned order dated 27.6.2009 that the disciplinary authority had taken into account the aforesaid considerations and factors at the time of imposing the said penalty of removal from service.

This Court, therefore, taking into consideration the circumstances, as discussed above, is of the view that the disciplinary authority did not apply their mind properly as required under Para 12(c) of the Bipartite Settlement as regards the imposition the penalty of removal from service with superannuation benefits and without disqualifying from future employment and accordingly, the impugned order of penalty dated 27.6.2009 can not be sustained.

9. The contention of Mr. A. Deni Sharma, learned counsel for the Respondent Bank, relying on the decision of the Supreme Court in Chairman and Managing Director, United Commercial Bank & Ors Vs. P.C. Karkar, (2003) 4 SCC 36 can be considered only after the Disciplinary Authority has passed the order of penalty in terms of Para 12(c) of the Bipartite Settlement. The Disciplinary Authority is under statutory obligation to take into consideration the factors mentioned in Para 12(c) of the BPS, failing which such an order of penalty will suffer from the vice of non application of mind. This lapse can not be filled by the authority by relying on the aforesaid decision of the Supreme Court. The issue of

proportionality of penalty in respect of bank employees as highlighted by the Supreme Court in the said decision can be considered only when the disciplinary authority has discharged the statutory obligation which in the present case, has not been done as discussed above.

10. In the result, the writ petition is allowed by interfering with the impugned order dated 27.06.2009 issued by the Disciplinary Authority to the extent indicated above and is accordingly set aside. The Disciplinary Authority is directed to pass a fresh order of penalty by keeping in mind the considerations as mentioned in Para 12(c) of the Bipartite Settlement as expeditiously as possible, against which the petitioner will have the right to prefer statutory appeal, if aggrieved with the order of the Disciplinary Authority that may be passed as directed by this Court, in accordance with the rules. Since, the impugned order of penalty dated 27.06.2009 passed by the Disciplinary Authority has been set aside, the petitioner shall be deemed to be under suspension w.e.f. 27.6.2009 till passing of the fresh order of penalty, which period will be dealt with by the authority appropriately as regards entitlement in accordance with the relevant service rules for which the Disciplinary Authority may also invoke the principle of "no work no pay."

11. With the above observations and direction, this writ petition is disposed of accordingly.