

(2013) 01 P&H CK 0015
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 10090 of 1994

Harish Aggarwal

APPELLANT

Vs

Bank of India and Others

RESPONDENT

Date of Decision : 24-01-2013

Acts Referred:

Citation : (2013) 4 SCT 396

Hon'ble Judges : R.P. Nagrath, J

Bench : Single Bench

Advocate : D.S. Patwalia, for the Appellant; Gaurav Singh Hooda, Advocate for Mr. H.S. Hooda for the Respondents Nos. 1 to 3, for the Respondent

Judgement

R.P. Nagrath, J.—This is a second round of litigation at the instance of the petitioner to challenge the order of his removal from service, passed by the Punishing Authority invoking jurisdiction of this Court under Articles 226/227 of the Constitution of India. On the same articles of charges, the Disciplinary Authority had earlier passed order dated 13.11.1991 (Annexure P-7), by which penalty of removal from service, was inflicted. The petitioner challenged that order in CWP No. 18089 of 1991, which was allowed vide judgment dated 22.4.1994 (Annexure P/8), of this Court, basically on the ground that the Punishing Authority was influenced by the advice tendered by the Vigilance Officer and the order of removal of the petitioner from service was quashed with a direction to the Disciplinary Authority to reconsider the matter in accordance with law. It was further directed that the Disciplinary Authority after affording an opportunity of hearing to the petitioner shall pass appropriate order within two months. The order of removal of petitioner from service now under challenge is dated 20.06.1994 (Annexure P-9). The petitioner, as Bank Officer, is governed by the Bank of India Employees (Discipline and Appeal) Regulations, 1976 (for short to be described as "1976 Regulations") for the acts of misconduct alleged to have been committed by him while posted as Staff Officer in the main Branch of the respondent-Bank at Chandigarh at the relevant time.

2. The petitioner was appointed as a Probationary Officer with the respondent-Bank vide appointment letter dated 17.12.1981 and he joined respondent-Bank on 5.1.1982. During tenure of his service, he was transferred from place to place and during his posting at Chandigarh Branch, he committed the alleged acts of misconduct.

3. The petitioner had written letter dated 28.5.1990 (Annexure P/3) to the Bank Branch at Chandigarh, where he was posted, informing that during the month of May, 1989 one share application each of Kamoria Petro, Punjab Power, Pearl Poliers and Cadilo hospital was replaced. For the said act on his part, he felt sorry and assured that such an act shall not be repeated in future and that he was also willing to deposit the money. He wrote another letter dated 31.07.1990 (Annexure P/4) to the Investigating Officer of the bank explaining the circumstances how the share applications were replaced in the name of wife of the petitioner. The petitioner explained that this might have happened due to some sort of job dissatisfaction and huge burden of work of his seat.

4. Thereafter the petitioner was served with following articles of charge;

Article-I that while attending to share application/money collection business during April, 1989 to June, 1989 without paying any share money you surreptitiously substituted the share application in the name of your wife in the place of the share application along with the share money received from genuine applicants one time each in respect of the share issues of M/s. Kanoria Petro Products Ltd. M/s. Pearl Polymers Ltd., M/s. Punjab Power General Machine Limited and twice in respect of the share issue of M/s. Cadialla Hospital Products Limited thereby wrongfully adjusting the share money received in each case against the share application in the name of your wife.

That in the aforesaid manner, on each such occasion, you perpetrated a fraud on the Bank. You have thus failed to discharge your duties with utmost honesty, integrity, devotion and diligence and you have also failed to ensure and protect the interest of the bank which if proved will amount to breach of Regulation 3(i) of the bank of India Officer Employees (Conduct) Regulations, 1976.

Article -II that with a view to cover up the aforementioned frauds committed by you, you willfully suppressed and/or destroyed the relevant files and papers containing the details of share money collected by the Bank in respect of the share issues of M/s. Pearl Polymers Ltd., M/s. Monoria Petro Products Ltd. and M/s. Punjab Power General Machine Limited.

That in the aforesaid manner you failed to discharge your duties with utmost honesty, integrity devotion and diligence which if proved will amount to breach of Regulation 3 (i) of the Bank of India, Officer Employees (Conduct) Regulations, 1976.

5. The petitioner submitted reply to the charge sheet Annexure P/6 dated 18.2.1991 stating that he had already admitted these articles of charge vide his

letter dated 31.7.1991 and prayed for sympathetic view and pardon for this lapse. That ultimately resulted into passing of order of punishment Annexure P/7 dated 13.11.1991, which was subject matter of challenge in the earlier writ petition, as already referred.

6. The petitioner challenged the order of punishment (Annexure P/9) almost on the similar grounds which he raised in the previous petition and that the Disciplinary Authority has not applied its mind though stated in the order that it was passed without taking into consideration the advice tendered by Chief Vigilance Officer and after applying its mind. Such an order could not have been passed by the Disciplinary Authority when earlier it had recommended the penalty of stoppage of some increments of the petitioner. The order is attacked as colorable exercise of power and is liable to be quashed. The other ground of attack is that the penalty of removal from service is grossly disproportionate. The petitioner had written letters Annexures P/3, P/4 and P/6 earlier admitting the alleged acts of misconduct on the understanding that a simple warning would be given to him. The main contention of the learned counsel for the petitioner is that the petitioner had been denying all through the allegations against him being untrue and ill-founded.

7. The respondents have contested this petition.

8. The first and foremost opposition to the prayer of the petitioner is that he has equally efficacious remedy of challenging the impugned punishment order by way of appeal to the departmental authorities. Reliance is also made to the categorical statement of the Disciplinary Authority in the impugned order, that he has carefully considered and examined the whole matter afresh, without taking into consideration the advice tendered by the Chief Vigilance Officer and applied his own mind independently, in arriving at the conclusion for holding the charges to be proved. The other contention is that the consultation with the Chief Vigilance Officer was only meant for those employees who are in middle management grade scale-III and above whereas the petitioner happened to be in Junior Management Grade Scale-I and the matter, in fact, was not even required to be referred to the Central Vigilance Commission.

9. It is strenuously argued that the instant petition was admitted by a Division Bench after hearing the learned counsel for the parties on 14.3.1995 and that Court was well aware of the plea of about the alternative remedy being available and deemed to have been duly considered at that time. Now after 18 years of the institution of the instant petition, the petitioner cannot be relegated to his remedy before the departmental authorities to challenge the impugned order by preferring the appeal. In support of this contention the reliance is placed upon *Hisar District Central Coop. Bank Ltd. v. S.L. Sharma and another*, 2005 (1) S.C.T. 341 : L.P.A. No. 1256 of 2001 decided on 9.11.2004 and 1996 (1) S.C.T. 571 : C.W.P. No. 4990 of 1985 (*Dr.*) *Rai Jasbir Singh v. State of Punjab* decided on 6.11.1995. There cannot be any quarrel with the above proposition of law but in the peculiar facts of this case, I am of the firm view that the appropriate

decision to substitute the finding of the Disciplinary Authority, if any, can only be taken by the Appellate Authority otherwise after the decision has been made by the Disciplinary Authority under the direction of this Court, it would not be appropriate to direct the adoption of same course. Therefore, the petitioner who had the remedy of appeal under Regulation 17 of the 1976 Regulations must now approach the departmental authorities to challenge the impugned order.

10. A perusal of impugned order Annexure P/9 would show that the Disciplinary Authority referred to the letter dated 18.2.1991 sent by the petitioner in reply to the charge sheet wherein he conditionally admitted charges levelled against him. The Disciplinary Authority then made specific observations adopting those proceedings.

11. Before passing the impugned order, the Disciplinary Authority in this case called the petitioner for hearing on 20.6.2012. The petitioner filed two letters of the even date before the Disciplinary Authority. The copies of those letters were called and taken on record at the time of hearing of appeal. It is contended that perusal of these letters would clearly show that the petitioner denied the allegations contained in the articles of charges as untrue and incorrect, and thus there was no alternative for the Disciplinary Authority except to order regular inquiry in accordance with the Regulations. It is further contended that if the Punishing Authority was to reiterate the earlier proceedings there was no purpose in affording the petitioner a fresh opportunity of being heard as directed by this Court vide order dated 22.4.1994 in CWP No. 18089 of 1991 filed by the petitioner.

12. I have given my thoughtful and anxious consideration to the above argument of the learned Counsel and am unable to agree with this contention. This Court in earlier writ petition filed by the petitioner never permitted the re-opening of the matter by directing holding an inquiry after recording fresh plea of the petitioner on the articles of charges against him. The petitioner pleaded in the earlier petition also that the allegations against him were untrue but admitted the articles of charges on the assurance that the matter would be closed. This argument ultimately did not find favour with this Court. The observations of this Court in the earlier judgment dated 22.4.1994 (Annexure P/8) are as follows:

Mr. P.S. Patwalia, Advocate, learned Counsel for the petitioner on the strength of the judgment in Nagaraj Shivarao Karjagi Vs. Syndicate Bank Head Office, Manipal and another, contended that the Disciplinary Authority was required to exercise its judicial discretion but instead of doing so, it has acted solely on the advice tendered by the dictation of a third party like the Vigilance Officer, cannot be maintained. As regards the alternative remedy of appeal he contended that in appeal, respondents can only go into legality or correctness of the enquiry against an employee or can go into the adequacy of the punishment. Since in the present case, the punishment has been awarded on the advice of the Chief Vigilance Officer which was required to be sought as per instructions, approaching the Appellate Authority would be absolutely futile.

13. Ultimately C.W.P. 18089 of 1991 was disposed of with the following directions:--

Consequently, this writ petition is allowed, order dated 13.11.1991, Annexure P/7 is quashed and a direction is issued to the Disciplinary Authority to reconsider the matter in accordance with law, without taking into consideration the advice tendered by the Vigilance Officer. The Disciplinary Authority, after affording an opportunity of hearing to the petitioner, shall pass an appropriate order within two months from today.

14. There is, thus, no scope of entertaining the contention that the petitioner could reopen the case by claiming enquiry on the articles of charges under the Regulations, on the ground that there was denial of charges by the petitioner. Since the instant petition was admitted after preliminary hearing and remained pending for many years, this petition is required to be disposed of with time bound directions. It is, thus directed that if the petitioner files departmental appeal within 45 days from today, the department would neither raise the plea of delay in filing the appeal nor the Appellate Authority would entertain such a ground in disposal of his departmental appeal. On such filing of appeal, the Appellate Authority shall decide the same within a period of two months thereafter affording the appellant reasonable opportunity of being heard and in accordance with the Regulations and principles of natural justice.

Disposed of in the above terms.