(2013) 03 DEL CK 0154

In the Delhi High Court

Case No : Writ Petition (C) No. 3589 of 1997

Jagjit Singh	APPELLANT
Vs	
Punjab National Bank	RESPONDENT

Date of Decision : 06-03-2013

Acts Referred:

Citation : (2013) 03 DEL CK 0154

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Ashok Bhalla and Mr. Rajeev Kumar, for the Appellant; Yashraj Singh Deora, Prashant Narang and Ms. Anupama Dhurve, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This writ petition is filed by the petitioner challenging the order passed by the Disciplinary Authority on 4.9.1995 imposing upon the petitioner the major penalty of removal from the services of the respondent-bank. The petitioner was issued a charge sheet dated 4.10.1994 which showed that the petitioner was guilty of giving loans to various persons without taking security documents. Petitioner was also found to be opening fake accounts. The imputation of charges against the petitioner reads as under:-

STATEMENT OF IMPUTATION OF CHARGES IN SUPPORT OF ARTICLE OF CHARGES AGAINST SHRI JAGJIT SINGH MANAGER (U/S) BO, SONEPAT, PREV. AT B.O. HAILEY MANDI OF ENBI CHARGE-I

He acted in a manner unbecoming of a bank officer and sanctioned/disbursed Demand loans without any security/documents for his personal gains.

Shri Jagjit Singh sanctioned/disbursed the following demand loans without any security:-

S.No.

Name of party

Date of Advance Limit

1.

Mrs. Vijay

24.9.92.

7500.00

2.

Sh. Ashok Aggarwal

19.10.92

25000.00

3.

Smt. Shanti Devi

06.11.93

20000.00

4.

Smt. Maya Devi

14.07.93

6000.00

5.

Sh. Yogesh Kalra

08.04.93

16000.00

In all the above mentioned demand loans no documents were obtained by Shri Jagjit Singh and no FDR was held on record except duplicate payment vouchers. Shri Yogesh Kalra at S. No. 5 has denied having taken any loan from the branch. The signature of Shri Yogesh Kalra, Advocate differs from those available/held on record of the branch on legal notices issued by Shri Kalra on behalf of the bank to the borrowers/parties.

All the payment vouchers of the above said demand loans have been prepared by Shri Jagjit singh himself and payment was received in cash by him. Shri Singh also opened these a/cs in ledgers without mentioning proper addresses of the borrowers and without any particulars of FDRs/security. Original payment vouchers of the above mentioned demand loans are also not held/available on record of the bank. Shri Singh adjusted demand loans of Sh. Ashok Aggarwal, Smt. Shanti Devi, Shri Yogesh Kalra and Smt. Maya Devi on 15.11.93 under his own signatures in cash. He also adjusted demand loan a/c of Mrs. Vijay on 1.3.94.

Thus Shri Singh acted in a manner unbecoming of a bank officer and sanctioned/ disbursed D/loans without any security and obtaining proper documents for his personal gains.

CHARGE-II

He disbursed T/loan by impersonation and no such persons are available in the villages at the mentioned addresses as per loan documents.

a) He sanctioned and disbursed T/loan of Rs. 9000/- to Shri Suresh Chander S/o Sh. Ram Chander V&PO Jatoli Distt.. Gurgaon on 17.5.93 without approval/ confirmation from Regional office Rohtak of ENBI because loaning powers of the field staff were under suspending at that time. No such borrower is available as per the address mentioned on the documents. The loan was not recommended by the 2nd man of the branch. Photograph of the borrower is not held on record. There are several cuttings in the documents obtained by Shri Singh.

b) He sanctioned and disbursed T/Loan of Rs. 5500/- to Shri Jaipal S/o Sh. Sukh Ram village Balewa for pan shop on 7.6.93 under general category without obtaining approval/confirmation from Regional Office Rohtak of ENBI because loaning powers of the field staff were under the suspension. No such borrower is available at the address mentioned on documents. Photographs of the borrower is not held on record. Shri Jagjit Singh released the T/loan in cash to Shri Jai Pal whereas the same should have been released through Cash Order. The application is also not held on record. There are several cuttings on the documents.

CHARGE-III

He failed to conduct proper post-sanction follow up for safeguarding the interest of the bank.

He sanctioned and disbursed the following loans and failed to conduct proper post-sanction follow up to ensure the end-use of the loan amount because the bills of the suppliers are not held on record.

S.No.

Name of the party

Date of advance Limit

1.

Budh Ram

27.5.93

5000.00

2.

Sant Ram

18.6.93

5000.00

3.

DISCIPLINARY AUTHORITY

DEPUTY GENERAL MANAGER

(underlining added)

2. Admittedly, the petitioner has not filed any written defence before the Enquiry Officer. The petitioner pleaded before the Enquiry Officer that it would not be possible for him to contest the proceedings unless subsistence allowance is paid to him. This aspect and other preliminary aspects are dealt with in the following portion of the report of the Enquiry Officer, which reads as under:-

The preliminary hearing was fixed on 10.1.95 at lead Bank Office, Sirsa Road, Hisar by the enquiry officer vide his notice dated 30.12.94 which was dispatched on the latest available address of the charged officer i.e. Sh. Jagjit Singh, 16/16, WEA, Karol Bagh, New Delhi. The copy of the notice alongwith receipt no. 6322 dated 30.12.94 of the courier were placed on record as exhibit E-III & E-IV respectively. The charged officer did not turn up for the proceedings as is evidence from page no. 1 & 2 of the proceedings register. The next date of hearing was fixed for 30.1.95 after proper notice and recorded therein as per para no. 1 of the proceedings register of 30.1.95 at page no. 3. The charged officer again defaulted and the enquiry officer passed the following orders (please refer page no. 3 of the proceedings register and para 2).

As the charged officer has not presented himself and this being 2nd opportunity, no enquiry business may be undertaken and 3rd and last opportunity may be given to him before the proceedings may be taken ex-parte. A set of photo attested copies of the documents filed by the PO alongwith today''s proceedings and further date of hearing to be 23.2.95 at BO: Hailey Mandi At 11:00 AM be advised to him by registered post. In case he intends to inspect the documents from the originals, he may visit to: Haily Mandi on 1.2.95 for inspection and preparation of his list of documents and defence witnesses. The PO to ensure the necessary arrangements in this regard by visiting the branch. In case the charged officer does not turn up on date of inspection as well as date of enquiry the proceedings may be taken ex-parte with a clear presumption so arosed from the circumstances of the case that the charged officer does not interest in co-operating with the proceedings of the case. It is reiterated that this is the last opportunity.

On 30.1.95, the charged officer met the enquiry officer after the close of proceedings for the day & informed that he will not attend any enquiry proceedings until you instruct the chief Manager. BC: Sonepat to allow him the withdrawals from his savings fund account in which the subsistence allowance was being credited by the branch. The enquiry officer replied him that this is an administrative matter for which the matter may be taken up with the Chief Manager, BO: Sonepat and if need be with the Zonal Manager, zonal office, Chandigarh in whose command the CM, Sonepat falls administratively. It has nothing to do with the enquiry proceedings. He also confirms that his address on which the documents have been dispatched by the enquiry officer on 31.1.95 asking for the instructions to the letter of the charged officer has been placed to the record as he also informed that similar copies have also been dispatched to the zonal Manager/Chief Manager for needful. The inspections of documents was ordered for 14.2.95 at BO: Hailey Mandi for which the charged officer against defaulted. On 23.2.95 the proceedings as notified were undertaking at BO: Hailey Mandi, Distt. Gurgaon when the fact of charged officer having met the enquiry officer was recorded on page no. 4 of the proceedings register.

(underlining added)

3. A reading of the aforesaid portion of the report of the Enquiry Officer shows that after deliberately not appearing on two dates of hearings, the petitioner appeared before the Enquiry officer before the third date of hearing which was fixed as 23.2.95. The petitioner appeared on 30.1.95 before the Enquiry Officer and informed that he will not attend any enquiry unless the Chief Manager of the Branch of the bank at Sonepat allows the petitioner to make withdrawals from his savings bank account in which the subsistence allowance was being credited.

4. Before the Enquiry Officer, the bank has led evidence of its witnesses and filed documents, and the Enquiry Officer in terms of a detailed report running into 11 pages has held the petitioner guilty on all the three charges as per the article of charges.

5. Learned counsel for the petitioner has argued before this Court that non-payment of subsistence allowance amounts to violation of principles of natural justice and therefore, the entire departmental proceedings against the petitioner are liable to be set aside. Reliance for this purpose is placed upon the judgments of the Supreme Court in the cases of Ghanshyam Das Shrivastava Vs. State of Madhya Pradesh, , Jagdamba Prasad Shukla Vs. State of U.P. and Others, and State of Punjab and Others Vs. K.K. Sharma, Another argument on behalf of the petitioner was that since the petitioner has been acquitted in the criminal case, petitioner should also be discharged in the departmental proceedings, and for which purpose, reliance is placed upon George N.S. Vs. Comm. of Police,

6. On behalf of the respondent, it is firstly argued that even assuming subsistence allowance is not allowed to be withdrawn, yet, it is necessary that prejudice should be shown by the petitioner/charged official before the enquiry

proceedings are sought to be set aside, and for which purpose reliance is placed upon Indra Bhanu Gaur Vs. Committee, Management of M.M. Degree College and Others, It is also argued that factually the petitioner had made a false statement in the writ petition that the petitioner was not allowed to operate or make withdrawals from his savings bank account of the bank at Sonepat, inasmuch as, documents being Annexure R-III to the counter-affidavit shows that from 18.2.1995 to 13.12.1995 different amounts which totalled to an amount of Rs. 26,400/- were paid by means of cheques to third parties, and an amount of Rs. 2000/- was withdrawn in cash on one occasion. It is argued that to overcome the concealment of facts and falsely stating that the petitioner was not allowed operation of the account/withdrawal, the petitioner with his rejoinder filed the statement of the savings bank account as Annexure-XVIII to the rejoinder-affidavit and which statement of account shows that not only the subsistence allowance was credited in the account, but in fact various payments and withdrawals were made from the account.

7. Firstly, this Court is required to consider the aspect that petitioner was barred from making any withdrawals from his savings bank account. Be it noted that it is not the case of the petitioner that subsistence allowance was not credited to his account, however, it is pleaded that a lesser amount was credited to his account as wrong deductions were made by the respondent-bank.

8. In my opinion, the petitioner has quite clearly made a false statement on oath at the time of filing of the writ petition that he was not allowed to make payments or withdrawals from his bank account. Once the respondent-bank filed counter-affidavit to show payments from the savings bank account by issuing cheques in favour of third parties including also of withdrawal of cash on one occasion, the petitioner was thereafter in the rejoinder forced to concede that in fact operation was permitted in the savings bank account. Once it is clear that operations were permitted in the savings bank account, I fail to understand as to how the petitioner can at all contend that he could not operate his savings bank account by making withdrawals and thereby could not attend the enquiry proceedings.

9. To consider the next issue argued on behalf of the petitioner that he was paid less subsistence allowance, and the response of respondent that the same would not make any difference in the facts of the present case because petitioner is not prejudiced, we need to refer to certain factual aspects. The first factual aspect is that the enquiry proceeding for the third date of hearing was fixed on 23.2.1995. Before this date, an amount of Rs. 4000/- (roughly out of an amount of Rs. 5,100/- in the account of the petitioner) was paid to the petitioner inasmuch as a cheque was issued by the petitioner in the name of third person which was cleared in the account. We are talking of the year 1995 when the amount of Rs. 4000/- can be a reasonable amount considering the fact that subsistence allowance which was credited every month in the account of the petitioner was in the range of Rs. 900/-. Also, the petitioner only had to travel from Delhi, where

he was living, to Hisar which is about 4 hours away and at that time, the transportation charges by road transport would not be such that out of the substantial amount of Rs. 4000/- which was withdrawn by the petitioner by apparently drawing the cheque in favour of the third party, he could not have appeared in the enquiry proceedings. Counsel for the petitioner argued that the third person made away with the amount of Rs. 4000/- however that aspect cannot be examined in these proceedings. Also, the Enquiry Officer''s report was thereafter given on 24.7.1995 and before that, there were three other withdrawals of Rs. 2000/- each, one being by self withdrawal and two by means of issuance of cheques of Rs. 2000/- each in favour of the third parties. Therefore, in my opinion, what really applies to the facts of the present case are not the judgments cited on behalf of the petitioner but the judgment in the case of Indra Bhanu Gaur (supra) cited by the respondent-bank, which states that non-payment of subsistence allowance itself is not good enough unless prejudice is shown. Of course, I must hasten to add that in the present case even on facts it is not as if subsistence allowance was not paid or that the operation of the account of the petitioner was stopped, and I am referring to the case of Indra Bhanu Gaur (supra) only as a buttressing aspect that even assuming withdrawal was not permitted, yet unless the petitioner shows that prejudice was caused, the argument as raised on behalf of the petitioner may not be able to sustain itself. In any case, the judgments cited on behalf of the petitioner of subsistence allowance being not paid and therefore, the enquiry proceedings be set aside will not apply to the facts of the present case because subsistence allowance was credited in the account and the savings bank account of the petitioner was in fact operated by him in the relevant period.

One argument which was raised on behalf of the petitioner was that the respondent-bank has wrongly calculated the subsistence allowance, because petitioner allegedly was entitled to a higher amount. This argument can be dealt with under two heads. Firstly, the issue of having a lesser subsistence allowance cannot be such which will cause prejudice to the petitioner in itself considering the facts of the present case. Secondly, the fact of the matter is that petitioner at no stage ever either filed a legal case or filed a detailed representation before the respondent-bank during the enquiry proceedings as to how the calculations being made by the respondent-bank of the subsistence allowance were wrong or as to why the deductions which were made by the respondent were legally not valid. The only document referred to me on behalf of the petitioner is a letter dated 30.1.1995 to the respondent, and which letter is only general in terms with respect to a lesser amount of subsistence allowance being granted. Therefore, it is not possible for this Court to state in the facts of the present case that the petitioner has definitely been getting only a lesser subsistence allowance than what he was legally entitled to. The issue with respect to subsistence allowance being less or complete, has necessarily to be a subject matter of substantive proceedings where detailed pleadings will have to be made by each of the parties and detailed aspects will have to be examined, before the Court can give any conclusion that subsistence allowance is being paid at lesser amount than what the petitioner was entitled to or that the amount as per law was paid.

10. In view of the aforesaid, in my opinion, it cannot be said that the petitioner was not allowed operations of his account i.e. withdrawals from his account or payment from the account, so as to contend on the basis of the judgment relied upon on behalf of the petitioner, that the subsistence allowance having been allowed to be withdrawn, the enquiry proceedings are vitiated and are liable to be set aside.

11. The second argument raised on behalf of the petitioner is equally misconceived inasmuch as it is settled law that acquittal in a criminal case will not be in itself good enough for discharge in the departmental proceedings. In the case of George N.S.(supra) which is relied upon on behalf of the petitioner, there was a specific Rule 12 of Delhi Police (Punishment and Appeal) Rules, 1980, as per which, charged official was to be discharged in the departmental proceedings, if he is acquitted in the criminal case and the evidence led in the criminal case and in the civil case is the same. In the case of George N.S.(supra) since the prosecution had failed to prove the charges and the evidence to be led before the Enquiry Officer in departmental proceedings were the same, therefore, pursuant to Rule 12, it was held that the charged official in that case should be acquitted. In the present case, there is no such rule as Rule 12 which requires automatic discharge of a charge sheeted official from the departmental proceedings on account of being acquitted in a criminal case. In service jurisprudence it is settled law that acquittal in criminal case will not operate as a discharge in the departmental proceedings and in which proceedings department can independently enquire into the charges. In view of the above, there is no merit in the petition, which is dismissed, leaving the parties to bear their own costs.

