(2019) 07 DEL CK 0010

In the Delhi High Court

Case No : Civil Writ Petition No. 3033 Of 2012

Jange Ram Gondwal APPELLANT

Vs

Chairman & Managing Director & Anr RESPONDENT

Date of Decision : 01-07-2019

Acts Referred:
Constitution Of India, 1950 — Article 14, 311

Citation : (2019) 176 DRJ 690

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Shekhar G. Devasa, Manish Tiwari, Jagat Arora, Rajat Arora, Niraj Kumar

Final Decision : Allowed

Judgement

Suresh Kumar Kait, J

1. Vide the present petition, the petitioner seeks direction thereby to quash the impugned orders/proceedings dated 03.11.2011 and 23.02.2012 passed

by the respondents- Disciplinary Authority as well as Appellate Authority awarding the penalty of â??compulsory retirement from service of the

Bankâ??, and consequently, reinstate the services of the petitioner with respondentsâ?? Bank with consequential benefits and cost of the writ petition.

2. The brief facts of the case of the petitioner are that on 24.10.1978, the petitioner was appointed as a clerk in the respondentsâ?? Bank and

thereafter, on 03.06.1985, promoted to the cadre of Junior Management Scale-I Officer.

On 11.07.1989, sum of Rs. 500/- transferred from the saving Bank account No.25500 to saving Bank STF-75 after obtaining the duly authorized letter

of Mr.Vinod Rai in favour of Bank, as Mr.Rai owed Rs. 500/- to the petitioner.

However, after lapse of 1Â½ years from the transaction, the said

Mr.Rai lodged the complaint to the Bank and alleged that the petitioner has withdrawn an amount of Rs. 500/- from his account unauthorisedly.

3. On 03.09.1991, Mr.Vinod Rai wrote a letter for withdrawal of complaint dated 28.08.1991 addressed to the respondent Bank. Since there was no

misconduct of the petitioner, therefore, the letter dated 03.09.1991 was accepted by the Bank. However, after 6 years from the complaint, inquiry was

initiated against the petitioner by the respondent-Bank based on two articles of charges which are as under:-

(1) While functioning as Assistant Manager at Nangloi Branch, New Delhi, during the period between 03.12.1985 and 15.07.1992, he

unauthorisedly/fraudulently transferred a sum of Rs. 500/- from SB A/c No.25500 of Shri Vinod Roy, a customer of the Branch, to his SB A/c

No.STF-75 on 11.07.1989 and thereafter, he created/ fabricated documents to cover up his fraudulent act.

(2) He was deputed to DTC Dichaon Kalan Extension Counter attached to Nangloi Branch during the period between 18.07.1989 and 23.10.1990 to

work there as Officer In-Charge and while functioning as such, he recommended/ caused to arrange loans, LD 519/90 on 01.07.1990 forR s. 35000/-;

LD 735/90 on 28.09.1990 for Rs. 35,000/-; LD 917/90 on 13.12.1990 for Rs. 25,000/-; and additional LD of Rs. 15,000/- under LD 519/90 on

02.04.1991 against the security of SSD 3/90 (VCC 55/90 was converted in to SSD 3/90 subsequently), VCC 82/90, VCC 83/90 and SSD 3/90

respectively, standing in the name of a minor depositor Master Sanju, Smt.Sunitha Gondwal, his wife was appointed as guardian of Master Sanju till

17.03.1997 by Honâ??ble District Judge of Delhi in Guardianship Case No.128/1988 vide court order dated 25.04.1990. The petitioner not only failed

to place on Bankâ??s record, a copy of court order but also unauthorisedly arranged/caused to arrange the above LDs in the name of his wife-

Smt.Sunita Gondwal against the deposits standing in the name of a minor, in contravention to the orders of the Court. Thereby, he surreptitiously

allowed his wife Smt.Sunitha Gondwal to derive undue pecuniary benefits and exposed the Bank to the risk of financial loss and making the Bank

liable for violation of Court orders.

4. Accordingly, the petitioner appeared before inquiring authority and filed his

defense. The Disciplinary Authority vide its order dated 04.01.1999 held

that the petitioner committed breach of regulations, wherein two articles of charges are proved and recorded. Therefore, he was terminated from the

services of the Bank.

5. Being aggrieved, the petitioner preferred an appeal and the same was dismissed by the Appellate Authority on 10.03.1999. Thereafter, the

petitioner filed Writ Petition No.5260/1999 before this Court and the same was disposed of vide its order dated 08.09.2011 holding that first article of

charge is proved in part and the second article of charge is not proved, hence, set aside the impugned order therein and placed the matter again before

the DA to determine the appropriate penalty in light of its judgment. It was also ordered that consequential order depending on the penalty order will

also be the issue by the DA within the same period. Accordingly, the Disciplinary Authority vide impugned order dated 03.11.2011 directed the

petitioner â??compulsory retirement from service with immediate effectâ?, however, without passing consequential order as directed by this Court

vide order dated 08.09.2011. The petitioner challenged the said order in appeal, however, the appeal was dismissed vide order dated 23.02.2012.

6. Learned counsel for the petitioner submits that the impugned orders are beyond the scope, terms and direction issued by this Court vide order dated

08.09.2011, whereby this Court had set aside the orders and placed the matter before the Disciplinary Authority for determining the appropriate

penalty on the petitioner, but both the Disciplinary Authority as well as the Appellate Authority have gone beyond the terms of direction issued and

gone to the extent of discussing and giving findings on both the articles of charges, however, the fact remains that both the orders are already set aside

by this Court.

7. It is further submitted that the petitioner is entitled to suspension allowance and other benefits from 04.01.1999 to 08.09.2011 under the Banking

regulation nos. 14 and 15 of Syndicate Bank Officer Employeesâ?? (Conduct) Regulations, 1976 and in the light of the judgment passed by this Court

in H.N. Wadhwa vs. Punjab National Bank & Another in W.P.(C) 7343/2014 and also in S.M. Gupta vs. Oriental Bank of Commerce & Ors.: 115

(2004) DLT 257, wherein it was held that once the order of disciplinary authority is set aside and a person is to be taken in service, then in accordance with the regulations, the charged officer is deemed to be on suspension and suspension allowance would have to be paid to such a charged official.

8. It is further submitted that the petitioner has put more than 20 years of his life towards the service of Bank and has suffered the penalty of

compulsory retirement. The petitioner is entitled to pensionary benefits in light of the judgment passed by this Court in case of Kamlesh Pratap Singh

vs. United Bank of India: (2015)222 DLT (CN B) 14 and judgment passed by the Honâ??ble Supreme Court in the case ofB ank of Baroda vs. S.K.

Kool (D) Through LRs & Anr: 2014 (2) SCC 715.

9. It is submitted that the respondents have been taking varied stand; firstly, they replied that the request or benefits cannot be considered in view of

the pending writ petition as it is subjudiced, on the other hand, replied that the petitioner is not entitled to arrears of salary, EPF, leave encashment,

gratuity and pension. Thirdly, replied that gratuity amount is forfeited and self-contribution of petitionerâ??s EPF has already been paid and the

management share of EPF is payable, subject to adjustment of direct and indirect liabilities and financial loss caused to the Bank, however, no such

liability and loss caused to the Bank ever quantified by the respondents.

10. Further submitted that on perusal of the impugned order dated 23.02.2012 passed by the Disciplinary Authority whereby observed that the

punishment was awarded for unauthorisedly/fraudulently transferring a sum of Rs. 500/- from SB A/c No.25500 of Shri Vinod Roy, a customer of the

Branch, to his SB A/c No. STF-75 and created/fabricated documents to cover up his fraudulent act. He, thus, availed undue pecuniary benefit in a

superstitious manner in detriment to the interest of the Bank. In terms of the Court order, the earlier matter was placed again before the DA who has

in the light of judgment determined the appropriate penalty based on the inquiry findings. The cheque for Rs. 500/- and the authority letter were not

placed on Bank records on 11.07.1989 and were obtained after the date of transaction. The Court has also observed that there was no letter of

authorization in the Banks record when the transfer of Rs. 500/- took place and found no error in the conclusion arrived at by IA.

11. Learned counsel submitted, whereas, on perusal of an order of this Court dated 08.09.2011, no such words are used in the text/body of the

judgment. It is not in dispute that no criminal complaint was filed against the petitioner, the complainant was not examined and most importantly, the complaint was withdrawn on 03.09.1991 by the complainant.

12. On the other hand, learned counsel for the respondent Bank submitted that the action against the petitioner had been taken in pursuance to the chargesheet dated 30.01.1997 and the order dated 08.09.2011 passed by this Court in W.P.(C) 5260/1999. A chargesheet dated 30.01.1997 was issued to the petitioner wherein it was alleged against him that he had failed to discharge his duties with utmost integrity and honesty and indulged in conduct unbecoming of a status of Bank Officer and had thus contravened Regulation 3(i) read with Regulation 24 of the Syndicate Bank Officers Employees (Conduct) Regulations 1976. The inquiry in respect of the said chargesheet was constituted and the Inquiry Officer has given his findings dated 30.10.1998, wherein the charges levelled against the petitioner were held to be proved. The Disciplinary Authority of the Bank had thereafter passed the orders of the dismissal from service vide order dated 04.01.1999. The said order was maintained by the Appellate Authority and the appeal preferred by the petitioner was rejected, vide orders dated 10.03.1999.

13. Being aggrieved, the petitioner filed W.P.(C) 5260/1999 before this Court and vide its orders dated 08.09.2011, this Court had partially allowed the writ petition holding therein that only the first part of the charge against the petitioner has been proved and, therefore, the quantum of punishment will have to be re-examined by the Disciplinary Authority of the Bank. Subsequent thereto, the Disciplinary Authority of the Bank vide its order dated 03.11.2011 considering the judgment of this Court had re-examined the punishment and the punishment was modified from dismissal from service to one of compulsory retirement. The petitioner thereafter had preferred a Review Petition against the judgment dated 08.09.2011 and the same was rejected vide order dated 23.12.2011. The petitioner had also challenged the orders passed by this Court in W.P.(C) 5260/1999 by filing a LPA being LPA No. 122/2012. The said appeal has been admitted by this Court vide orders dated 17.02.2012. Subsequent to the passing of the order by the Division Bench, the departmental appeal which was preferred by the petitioner against the orders of the Disciplinary Authority dated 03.11.2011 had also stood rejected vide orders dated 23.02.2012.

14. Learned counsel for the respondent Bank submitted that the present petition

has been filed against the orders dated 03.11.2011 read with orders

dated 23.02.2012 passed by the Disciplinary Authority/Appellate Authority of the respondent Bank. The said orders are in consonance with the

principles of natural justice and there has been no violation of Articles 14, 21 and 38 and 311 of the Constitution of India as has been alleged. It is

pointed out that Article 311 of the Constitution would not apply in the case of the petitioner at all, as he is not a government servant and the said article

is not applicable to the Bank officers.

15. It is further submitted that as a matter of record, a complaint was made by Shri Vinod Rai and thereafter, withdraw the same. The petitioner might

have won over the complainant which compelled him to withdraw the said complaint. The averments clearly show that the petitioner and the

complainant had private dealings which were not in the knowledge of the Bank and action was initiated only on receipt of the complaint by a

customer.

16. Counsel for the respondent has pointed out that inquiry proceedings are to be read as a whole. The petitioner cannot pick and choose the

sentences/questions in a piecemeal and cite them to his advantage. The deposition of the witness in the inquiry has to be read as a whole and the same

cannot be read in bits and pieces, as has been done in the petition.

17. Counsel for the respondent submitted that the findings given by the learned Single Judge of this Court in the order dated 08.09.2011 cannot be

challenged in the present petition, the same has become final. Moreover, subsequent to the orders dated 08.09.2011, the Disciplinary Authority of the

respondent Bank has modified the punishment and has converted the punishment from dismissal to compulsory retirement.

18. Counsel for the respondent has drawn the attention of this Court to para 6 of the order dated 11.02.2013 passed in LPA No. 122/2012 filed by the

petitioner, whereby this Court has reproduced as under:-

â??6. In our opinion, since the authorization letter was not available in the record of the bank, it was for the appellant who produced the aforesaid

document during the course of the inquiry and not upon the bank to produce the complainant to prove that the document in question was actually

authored by the complainant. Even if the bank did not examine the complainant as a witness, nothing prevented the appellant from examining him as a witness, in order to prove the document relied upon by him. It was pointed out by the learned counsel for the appellant that one of the witness admitted

during the course of inquiry that the signature on the authorization letter were identical to the signature on the complaint which Mr. Vinod Rai had sent

to the bank, though the same were different from the signature of Mr. Vinod Rai with the bank. The contention was that the witness of the bank

having admitted the signature of the complainant on the authorization letter produced by the appellant during the course of inquiry, the aforesaid

document could not have been excluded from consideration and if that document is taken into consideration, it would be evident that the complainant

had actually authorized the appellant to transfer Rs.500/- from his account to the personal account of the appellant. We, however, find ourselves

unable to agree with the learned counsel for the appellant. In our opinion, primarily it is for the author of the document to come in the witness box to

prove the document purporting to be written by him and reliance upon the opinion of the another witness in this regard would not be appropriate in the

absence of any satisfactory explanation for not examining the author of the document and also considering the fact that even in the LPA 122/2012

page 5 of 8 opinion of that witness, the signature on the authorization letter were different from the signature of the complainant available in the record

of the bank. We, therefore, find no fault with the view taken by the learned Single Judge with respect to the first article of charge.â??

19. Counsel for the respondent has relied upon the case of R. Thiruvirkolam vs. Presiding Officer and Another: 1997 SCC (L&S) 6 5whereby held

that in a case where the inquiry was found to be defective by the Labour Court and it then came to the conclusion on its own appraisal of evidence

adduced before it that the dismissal was justified, the order of dismissal made by the employer in a defective inquiry would still relate to the date when

that order was made. It was further held that unless the order of punishment is set aside by a competent Court on a valid ground, the order of

punishment made by the employer continues to operate.

20. I have heard learned counsel for the parties at length and perused the material available on record.

21. It is not in dispute that in order dated 08.09.2011 passed in the W.P.(C) 5260/1999 filed by the petitioner, this Court has observed, â??the

petitioner is unable to explain how Mr.Vinod Rai could have possibly issued a cheque on 09.07.1989 from a cheque book which was issued to him only

on 15.07.1989. Also, why did the petitioner hold on to the authorisation letter (MEX-14) also undated, for so many years and thought it fit to produce it

only on 14.10.1996 when questioned by the VO? Consequently, this Court is unable to find any error in the conclusion arrived at by the IA that there

was no letter of authorisation in the Bankâ??s record when the transfer of Rs. 500/- took place. However, this was only a part of the first charge.

The remaining part that the petitioner â??created/fabricated documents to cover up his fraudulent actâ? and that he availed pecuniary benefits â??in

a surreptitious mannerâ? were not held by the IA to be proved. This would have a bearing on the assessment of the gravity of the misconduct and the

commensurate penalty.â? However, held that finding of EA on the second Article of Charge is based on evidence and is unsustainable in law.

Accordingly, only a part of first charge can be held to have been proved against the petitioner.

22. In view of the above observations made by this court, the orders of compulsory retirement cannot be set aside.

23. Thus, the punishment order of dismissal from service has been set aside by this court.

24. Consequent to the order passed, the disciplinary authority vide impugned order dated 03.11.2011 directed the petitioner â??compulsory retirement

from service with immediate effectâ??, however, without passing consequential order as directed by this Court vide order dated 08.09.2011.

25. In case of S.K. Kool, (supra), it is held that an employee who has rendered a minimum of ten years of service and fulfils other conditions, only can

qualify for pension in terms of Regulation 14 of the Regulations. However, such of the employees who are not eligible and have not put in required

number of years of qualifying service shall not be entitled to the superannuation benefits though removed from service in terms of Clause 6(b) of the

Bipartite Settlement. It is further held that such of the employees who are otherwise entitled to superannuation benefits under the Regulations if visited

with the penalty of removal from service with superannuation benefits shall be entitled for those benefits and such of the employees though visited

with the same penalty but are not eligible for superannuation benefits under the Regulations shall not be entitled to that.

26. The Regulations 14 and 15 of Syndicate Bank Officer Employeesâ?? (conduct) Regulations, are reproduced as under:-

â??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-regulations (2) to (4) be entitled

to receive payment from the bank by way of subsistence allowance on the following scale, namely â?

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 :

1) where the inquiry 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 which the officer employee was drawing on the date prior to the date of

suspension for the next three months and 1/2 of the Basic Pay which the officer employee was drawing on the date prior to the date of suspension for

the remaining period of suspension.

b) Allowances : For the entire period of suspension, Dearness Allowance and other allowances excepting Conveyance Allowance, Entertainment

Allowance and Special Allowance, will be calculated on the reduced pay as specified in items (i) and (ii) of Clause (a) and at the prevailing rates or at

rates applicable to similar category of Officers.

2) During the period of suspension an Officer Employee shall not be entitled to occupation of a rentfree house or free use of the Bankâ??s car or

receipt of conveyance or entertainment allowance or special allowance.

3) No Officer Employee of the Bank shall be entitled to receive payment of subsistence allowance unless he furnishes a certificate that he is not

engaged in any other employment, business, profession or vocation.

4) If, during the period of suspension, an Officer Employee retires by reason of his attaining the age of superannuation, no Subsistence Allowance

shall be paid to him from the date of his retirement.

15. Pay, allowances and treatment of service on termination of suspension:

1) Where the competent authority holds that the Officer Employee has been fully exonerated or that the suspension was unjustifiable, the Officer

Employee concerned shall be granted the full pay to which he would have been entitled, had he not been suspended, together with any allowance of

which he was in receipt immediately prior to his suspension, or may have been sanctioned subsequently and made applicable to all Officer Employees.

2) In all cases other than those referred to in Sub-Regulation (1), the Officer Employee shall be granted such proportion of pay and allowance as the

competent authority may direct; Provided that the payment of allowances under this Sub-Regulation shall be subject to all other conditions to which

such allowances are admissible; Provided further that the pay and allowances granted under this Sub-Regulation shall not be less than the subsistence

and other allowances admissible under Regulation 14.

3) a) In a case falling under Sub-Regulation (1), the period of absence from duty shall, for all purposes, be treated as a period spent on duty;

b) In a case falling under Sub-Regulation (2), the period of absence from duty shall not be treated as a period spent on duty unless the Competent

Authority specifically directs, for reasons to be recorded in writing, that it shall be so treated for any specific purpose.

27. The similar issue came before this Court in H.N. Wadhwa (supra), whereby this Court held that if these regulations did not exist, then, it would

have been opened to an employee to state that once the order of the departmental authority is set aside that charged employee will be taken to be in

service and he has to be paid all the consequential benefits of being in service, and to avoid this position, the suspension is deemed to continue even

during the second phase of the departmental proceedings after the earlier order of the disciplinary authority is set aside and proceedings are to

continue against the charged official. However, the object of this provision is not to deprive even the suspension allowance to a charged officer

inasmuch as the charged officer during the period of departmental proceedings against him, may not be entitled to service benefits of salary etc, but,

there is no provision of law or any service rule of the respondent no.1/Bank that a charged employee during the period of departmental proceedings

should not even receive the suspension allowance. Accordingly, the said writ petition was allowed filed by the Charged Officer.

28. Accordingly, the petitioner is entitled to suspension allowance and other benefits from 04.01.1999 to 03.11.2011 under the Banking regulation

nos.14 and 15 of Syndicate Bank Officer Employeesâ?? (Conduct) Regulations, 1976 and in the light of the judgment passed by this Court in H.N.

Wadhwa (supra) and also in S.M. Gupta (supra), wherein held that once the order of disciplinary authority is set aside and a person is to be taken in

service, then in accordance with the regulations, the charged officer is deemed to be on suspension and suspension allowance would have to be paid to

such a charged official.

29. Since the petitioner has put more than 20 years of his service (now retired) and has suffered the penalty of compulsory retirement, the petitioner is

entitled to pensionary benefits in the light of judgment of this court in case of Kamlesh Pratap Singh (supra) and of Honâ??ble Supreme Court in

case of S.K. Kool (supra) including EPF, leave encashment and gratuity, if not already paid, with interest @ 6% per annum within four weeks from

the receipt of this order.

30. In view of above, the petition is allowed.

