(1981) 11 DEL CK 0016

In the Delhi High Court

Case No : Civil Writ No. 1527 of 1975

Krishan Dev Puri APPELLANT

Vs

Union of India and others RESPONDENT

Date of Decision : 17-11-1981

Acts Referred:

Citation : (1982) 44 FLR 335 : (1982) 2 LLJ 166

Hon'ble Judges : S.B. Wad, J

Bench : Single Bench

Judgement

1. The petitioner, who was working as an accountant at the Branch Office of the Punjab National Bank, Pathankot, was discharged from service on 30th September, 1975. The Personnel Committee of the Bank decided that the petitioner should be discharged for writing threatening letters to the Regional Manager in highly offensive language and also on account of unsatisfactory performance and past bad record. One month''s salary in lieu of notice was also offered to him by the Bank. On November 24, 1975, the petitioner''s appeal against the order of discharge was dismissed by Chief Personnel, Head Office.

2. The petitioner appeared in person. As the arguments proceeded, I found that the central question for decision was whether the order of discharge was punitive in character and mala fide. For this decision it was necessary to bring out all the facts cogently which of was beyond the capacity of the petitioner. The decision also called for the analysis of the case law on the question of discharge simplicities and its application to the facts of the present case. I, Therefore, offered the assistance of an advocate as an amices curiae but the petitioner was not inclined and preferred to argue the matter himself.

3. The impugned order is challenged on the following grounds :

(i) The order was punitive in character. It was the direct result of the charge-sheet alleging misconduct on the part of the petitioner.

(ii) The conduct of the enquiry against him on the said charge-sheet was contrary to Bank rules and in violation of principles of natural justice.

(iii) The impugned order was vitiated by the mala fide of respondent No. 3 C. L. Madhok. The said Shri C. L. Madhok was the Branch Manager from 1970 to 1974, and he had bias and prejudice against the petitioner.

(iv) There was material on record to substantial the reasons stated in the discharge order.

The respondent-Bank has controverter all these submissions :

(a) Relying on several decisions, the Bank has submitted that the impugned order was in the nature of a discharge simplicities and had no element of punishment. The fact that the charge-sheet was issued prior to the said discharge order does not convert the order of discharge simplicities into an order of dismissal for his conduct.

(b) Since it was not a case of dismissal for misconduct, the Bank rules in regard to conduct of an enquiry into the misconduct were not applicable. The only requirement according to the Bank Rules, before passing an order of discharge simpliciter, was to issue a show-cause notice. The said requirement was complied with.

(c) The allegations of mala fides are too vague and un-substantiated.

(d) There was enough material on record and within the knowledge of the petitioner, as disclosed through his representations, to sustain the order of discharge simpliciter. Even assuming that the evidence regarding unsatisfactory performance and past bad record was insufficient the impugned order can still be upheld on the ground that the petitioner was in the habit of writing threatening letters in highly offensive language to his superiors.

4. Annexure R-1 are the extracts of the Staff Circular of the Bank dated 28th October, 1952. Both parties agree that these are the Rules regarding disciplinary actions against the staff working in the Bank. The provision in the circular regarding the discharge simplicities reads as follows :

"An employee may have committed no offence but he may have developed traits which may make him unsuitable in Bank''s service. It is not possible to cover all the circumstances in which an employee may become unsuitable. Unsound mind, permanent physical weaknesses, worry arising out of litigation and domestic complications, speculation or such activities as may keep him preoccupied during office hours resulting into a peculiar behavior on his part may make him unfit for continuation in the Bank''s service. Therefore, such employees deserve sympathy and an attempt on the part of the management towards their improvement. But the part which the management can play is very limited in its scope and the time may come when a parting of the ways becomes inevitable and the employee may have to be discharged. Such cases shall be considered by the staff committee and the employee shall only be discharged when it is against the interests of the Bank to retain him."

5. Staff Circular No. 866, issued on 30th March, 1972, further requires inter alia, that where a permanent officer is to be discharged a show-cause notice should be served on the officer concerned.

6. There is no doubt that the impugned order is one of discharge simpliciter. The petitioner had also been offered one month''s salary in lieu of notice. There is sufficient evidence on record to show that the petitioner was feeling frustrated and angry because of imaginary belief that some elements in the Bank were out to harass him and denying him his normal increments, promotions, compensatory allowance, and similar benefits. He also entertained very strong feelings against the officer of the Bank of not being considerate to his problems created by accident to his daughter and prolonged illness of his wife. Because of this mental condition his performance was average and stoppage of increments were imposed on him number of times. The petitioner has his ownExplanationand grievance in regard to the actions taken against him in the past. But the fact remains that he kept on writing threatening letters to his superior officers. It appears from the voluminous records produced by both the parties that the Branch Managers were unwilling to have the petitioner as officer No. 2 in the Branch. I am satisfied that the Bank''s decision that the petitioner had rendered himself unfit for continuation in the Bank''s service, was reasonable and based on sufficient material.

7. The very wording of the impugned order shows that the petitioner was being discharged from the service and was not being dismissed for his misconduct. But; even if you go behind the form and look to the substance of the order, there is no suggestion of any misconduct or stigma or punishment.

8. The decision of the superior Courts on the question of discharge simplicities fall into two different areas. One set of decisions concerns with the removal of temporary Government servants, compulsory retirement, etc. The other line of decisions is in regard to the industrial workers under Industrial law. The test for determining whether the order is one of discharge simplicities or is one by way of punishment/stigma is not much dissimilar in these two lines of cases. No doubt, there is some minor difference but the same arises primarily because of the language of the statutory rules applicable to Government servants, and the provisions of statutes and standing orders applicable to industrial workers. Punjab National Bank primarily carries on commercial and economic activities. Before nationalization it was a private banking company and was governed by the provisions of various industrial laws applicable to the commercial establishments. It has now been nationalised. But the functions have not changed. Functionally, Therefore, the working of the Bank is more akin to other commercial and credit institution which are governed by industrial law jurisprudence. Staff circular No. 20, which has been partly quoted above, brings out the special characteristics of a banking institution and the Code of conduct

necessary for the employee of a credit institution. Adverse propaganda against the Bank, fraud, forgery or their apprehension in the minds of the clients might completely destroy the public confidence and, Therefore, confidence isreason d''? treof a commercial/credit undertaking. Although the Banks are nationalised, they are not converted into Government departments. The economic/commercial autonomy of the nationalized Bank is maintained and guaranteed through the Parliamentary legislation. The principles of law applicable in regard to the discharge or dismissal would, Therefore, be more akin to other commercial and industrial undertakings in private sector. Confidence is the main creed for the employees of a credit institution and unfitness due to lack of confidence is a principal derogatory conduct. I consider that the line of decisions applied to the employees of industrial/commercial establishments is more relevant to answer the problem in the present case.

9. In K.S. Bansal Vs. Indian Airlines and Others, all the decisions of the Supreme Court on this question were considered by Avadh Behari Rohatgi, J. He has catalogued the principles which flow from the said decisions. I am in respectful agreement with Avadh Behari, J, I need not, Therefore, go afresh to the decisions of the Supreme Court. Bansal''s case is most apposite both on facts and law. Indian Airlines is statutory Corporation similar to the Punjab National Bank. Bansal was discharged from service by the Indian Airlines for making wild personal allegations and aspersions against the Chairman of the Indian Airlines, which were defamatory in character. In the present case also the petitioner has written threatening letter to Respondent No. 3 and other senior officers. The question of law in both the cases is whether the writing of said letters amounted to misconduct under respective conduct rules and whether the discharge order was merely a clock. In both the cases the further question of law is whether non-holding of the regular domestic enquiry was mala fide.

10. There are three grounds on which the order of discharge is justified in the present case. They are : (1) writing threatening letters to superior officers, (2) unsatisfactory performance, and (3) past bad record. I will deal with grounds 2 and 3 first. I have seen the confidential reports for four years which were produced before me by the respondents. The best reports show that his record was only average. There are definite bad remarks against the petitioner. The impression left on my mind after going through the reports is that none of the Branch Manager wanted to have the petitioner work under him as No. 2 officer because of his behavior. So is the case regarding the bad service record. Number of times his increments were stopped or postponed in the past, The petitioner submitted that the stoppage of or postponement of increments was motivated and bad in law. The stoppage of increments is not the subject-matter of the present writ petition. They relate to the period spread over fifteen years. The petitioner also contends that he has been put to double jeopardy. His argument is that he has undergone the penalty of stoppage of increments for certain conduct of his. The same circumstances cannot be utilised for punishing him again. The argument is misconceived. The object of stopping an increment was

by way of punishment. The present action of discharge is not by way of punishment but merely cessation of master and servant relationship. But, even assuming that the said grounds are not fully established, the impugned order would not be vitiated. The order will hold good on the first ground, namely, writing of threatening letters to superior officers.

11. It may be noted that the petitioner has admitted the authorship of these letters. He has, of course, his ownExplanationand justification for writing the said letters. He submits that his repeated requests for transfer to Amritsar was being ignored. He was being denied the service benefits of promotion and increments in time. His general grievance is that he was being subjected to harassment and occasional inhuman treatment by the superior officers. His justification for writing the said letters is that the said letters do not contain any threats. According to the petitioner warning as regards the possible legal action does not amount to threat. At this stage we might note the contents of the said letters. In his letter dated 1st July, 1974, addressed to the Regional Manager, Jullundur City, the petitioner has bitterly complained against the confidential report written by Mr. M. K. Sharma, in-charge of Talwara branch It is stated that Mr. Sharma was intentionally lying and it was "the worst possible report that his poisonous pen could scribble" He has made a grievance of not being given the chance of being officiating-in-charge and for not transferring him to Amritsar. Copy of the letter was also addressed to the General Manager, Head Office, New Delhi, Annexure D-7 dated 12th July, 1974, is registered notice served by the petitioner on Shri C. L. Madhok, (respondent No. 3), Regional Manager, Jullundur City. The petitioner has bitterly complained for not transferring him to Amritsar where according to him his wife was seriously ill. The notice proceeds to state, "I have thus gradually come round to the firm view that you actually want that my wife should die unattended by your keeping me away from home through your maliciously used administrative powers ......" .... "I beg to give you registered notice herein about your transferring me to far-flung places away from Amritsar my native town intentionally with the motive of bringing nearer and end of my wife who is ailing for a very long time in Amritsar" ...... "I shall hold you responsible for her death, and sue you in a Court of law under S. 302, I.P.C. charging you of her murder" A copy of the notice was sent to the Chief Personnel, Personnel Division, Head Office, New Delhi. In his letter dated 18th July, 1974, (Annexure D-8) addressed to Mr. Madhok, respondent No. 3, the complaint is regarding non-recommendation to work as an Accountant at Branch Office, Talwara. The allegation is that the authorities are meting out most step-motherly and biased attitude towards him. There is a threat of taking the matter to the Court of law. Copies of this letter were sent to the superior officers. Annexure D-9 is a letter written by the petitioner to Shri C. L. Madhok the Regional Manager which is almost in the form of a notice. It is stated in the letter that Mr. Madhok through personal enmity and malicious misuse of his administrative powers has caused incalculable harm in shape of money and otherwise. There is a complaint against Mr. Sharma the Branch Manager, Mr. D.

C. Kalia, (referred to as the Manager Adviser) and against Mr. Madhok in regard to the ignoring of the confidential report dated 27th March, 1973. The petitioner''s allegation is that this "Excellent report" was being suppressed by the three officers and he was being denied the increment due on 8th April, 1974. Mr. Madhok is warned of legal action. It is further stated, "I demand that due payment of compensation is lieu of these following losses suffered by me be paid to me within one month from date of receipt of this notice by you, otherwise I shall sue you in the Court for recovery of the amounts involved" ..... "please pay be suitable compensation for these losses sustained by me personally from your own pocket, otherwise, I shall sue you in law Court for recovery of the amounts involved. Also you have been (through personal prejudices ad enmity) transferring me from branch to branch with the sole object of not allowing me to get my ailing wife properly treated in a good hospital and attend to her rest and treatment so as to cause to me maximum hardships and monetary losses. Please compensate me for these losses of worry, agony, and anxiety and undue insult and victimizations done out of sheer personal enmity". On the same date, namely, 16th September, 1974, the petitioner had sent two other notices to Shri D. C. Kalia, Manager, Jullundur City (Annexure D-11), and Shri R. P. Uppal, Area Manager, R. M.''s office, Jullundur City, (Annexure D-12). The main grievance of the petitioner was that in inter-departmental letter (which was not addressed to the petitioner) sent by Mr. Kalia on 16th July, 1974, to the Manager at Pathankot, it was stated that the petitioner should not be sent as an Accountant to the Branch office. Talwara, but some other Accountant should be sent. The other allegation was that he was not being transferred to Amritsar because of Mr. Kalia. It was alleged that Kalia had personal prejudice and enmity against the petitioner, that he was influencing Mr. Malhotra, the previous District Manager of the Bank for his various transfers. He was doing all these "to cause her (his wife) early death, through non-treatment and has inflicted maximum hardship and inconvenience upon me". The warning in the notice is as follows :

"I now request you to pay me like amount which I lost through your action, from your own pocket within a month otherwise, I shall file a suit against yourself claiming compensation or your conviction."

In a registered notice addressed to Shri Uppal, Area Manager, he charged Mr. Uppal for certain reports made by him out of "sheer personal enmity". He was also charged of "malicious exercise of your administrative powers".

Mr. Uppal was also threatened with filing a civil suit or criminal action unless compensation was paid to him. A similar registered notice was sent to M. R. Sharma, Manager, Amritsar, who had given an adverse confidential report against the petitioner. According to the petitioner, the report amounted to his "wrongful defamation, insult, and character assassination." The petitioner called upon Mr. Sharma to pay compensation of Rs. 20,000 or to face criminal trial under S. 500 I.P.C.

12. The confidential reports made by the said superior officers or the action

taken against the petitioner by the said officers, was in discharge of their duties. The threatening letters are written not only to respondent No. 3 but to the said other officers. Personal enmity is alleged against them. However, these are merely wild allegations. There is absolutely no record or evidence produced by the petitioner to show that any of the said officers including respondent No. 3 had any personal enmity against the petitioner. One of the main complaints of the petitioner was that he was not being transferred to Amritsar. There may be administrative reasons for not doing so. The respondents, on my directions, produced the details of various transfers of the petitioner for the last 20 years. There is nothing to show that they were not normal transfers. But to say that the officers were not transferring him to Amritsar because they wanted to see that his wife should die of her illness, and that too out of personal enmity is to leave all bounds of fair comment by an employee against the superior officers. So also demanding personal compensation, at the threat of a civil suit or criminal proceedings is an act of grave irresponsibility. They cannot be explained away on the plea that an employee has a right to the legal remedies for the alleged wrong done to him. The question here is not regarding the truth or otherwise of the allegations made by the petitioners against respondent No. 3 and the other senior officers. The problem is whether such an employee who indulges in personal threats almost to every senior officer is fit to be retained in the Bank''s service. It should also be remembered that an Accountant has an important position in a branch office and he is next in rank to the Manager of a branch. The normal working and the administrative discipline in a branch office are bound to be seriously dislocated by the conduct of an employee who indulges in such threats. It is true that a decision of a master, namely, the Bank, in regard to the fitness of the petitioner to continue in the Bank''s service, in these circumstances, cannot be normal gone into by the Court of law. I have gone in greater details only to satisfy myself that the decision of the Bank is bona fide and is not colourable. I am satisfied that the order of discharge is passed bona fide, on the basis of substantial material and on proper application of mind to the said material. The discharge order is not passed as an excuse or a cloak for avoiding the action of dismissal after domestic enquiry. I am further satisfied that the action is not intended to be a punishment or a stigma All that the order means is, writing of threatening letters renders the petitioner unfit to work in the Punjab National Bank. He may, in any other employment, and in relation to other offices, behave differently. He may, Therefore, not be unfit to get employment otherwise. Viewed from this angle, the impugned order cannot be described as a stigma on the petitioner.

13. Unfitness for service or unsuitability for service does not amount to misconduct, Union of India v. I. Ahmed, 979 II L.L.J. 14. Staff Circular No. 20 dated 28th October, 1952, which admittedly, are the conduct rules for the employees, also makes distinction between grounds of misconduct and grounds of unfitness/non-suitability. The circular states that unsoundness of mind, permanent physical weaknesses, worry arising out of litigation and domestic

complications, speculation or such activities as may keep him pre-occupied during office hours resulting into a peculiar behavior on his part, may make him unfit for continuation in Bank''s service. An employee may have committed no offence but he may have developed traits which may made him unsuitable in Bank''s service. As against this the following are illustrated as grounds of misconduct in the said Circular :

(a) Disloyalty to the Bank,

(b) Adverse propaganda,

(c) Dishonesty,

(d) Theft, fraud, forgery and any other act involving moral turpitude.

It is thus clear that the conduct of the petitioner falls under the category of unfitness and non-suitability rather than the misconducts enumerated in the Circular. Section 19 of the Banking Companies (Acquisition & etc.) Act, 1970, provides for the power to frame regulations for the purpose of giving effect to the provisions of the Act. Sub-section (3) of the said section reads as under :

"(3) Until any regulation is made under sub-s. (1) the articles of association of the existing bank, and every regulation, rule, bye-law or order made by the existing bank shall, if in force at the commencement of this Act, be deemed to be the regulations made under sub-s. (1) and shall have effect accordingly, and any reference therein to any authority of the existing bank shall be deemed to be a reference to the corresponding authority of the corresponding new Bank and until any such corresponding authority is constituted under this Act, shall be deemed to refer to the Custodian".

Circular 20, issued in 1952, has thus an effect of regulation framed under S. 19 of this Act. The order of discharge is in consonance with the said circular and it is thus valid.

14. There is no substance in the petitioner''s contention that the order is in violation of the principles of natural justice. He was given the show-cause notice as required by the said circular, his representation was considered and thereafter the impugned order was passed. There is no violation of natural justice principle. There is a vague allegation of mala fides against respondent No. 3. I have held earlier that the orders passed by respondent No. 3 were in discharge of his normal duties. Simply because the said orders are not liked by the petitioner or because they adversely affect the petitioner it cannot be said that the respondent No. 3 had any bias or enmity against the petitioner or that the impugned order is mala fide. This submission of the petitioner is also rejected.

15. The petitioner, however, submits that as the charge-sheet for misconduct was issued against him, Therefore, the regular domestic enquiry should have been held against him. He submits that a number of irregularities were committed by the Bank in the conduct of so-called enquiry against him. He also complains of

the violation of the principles of natural justice. There is not force in this submission. Even assuming that the grounds of discharge are also grounds of misconduct, the submission of the petitioner is not much advanced. If two courses are open to an employer according to law and one has been followed in preference to another, no illegality is committed, and the resulting order is not vitiated; K.S. Bansal Vs. Indian Airlines and Others, .

16. The due date of the retirement of the petitioner was 12th February, 1980. He has already collected all the terminal benefits and the other dues from the Bank. The petitioner was visited with the present predicament because of his peculiar temperament. It appears that he has suffered a great deal because of the accident which his daughter suffered and the prolonged illness which his wife was undergoing at the relevant time. The petitioner was smarting under anger because he was feeling that, in spite of his serious personal problems, the Bank was not treating him sympathetically. The bitterness in the correspondence between the petitioner and the Bank, as disclosed in the documents filed, can partly be explained in this light I, Therefore, requested the Bank to show some compassion to the petitioner on humanitarian grounds and pay him some money, which would be useful to the petitioner in the period of retirement. Dr. Anand Parkash, appearing for the Bank, made a very sympathetic gesture and volunteered to make a payment of Rs. 12,500 on humanitarian grounds. He, however, submitted that this amount should not be treated as payment of compensation or as an ex gratia payment with all its legal implications. He further submitted that the amount would be payable to the petitioner only if the petitioner would not be preferring further appeal and end the matter here itself. I cannot stop the petitioner in law from pursuing his legal remedies. However, I can make it clear that the said amount of Rs. 12,500 is payable only if the petitioner finally fails in his appeals, before the Division Bench and the Supreme Court, in case he prefers to file such appeals. After the matter is finally concluded the Bank shall make the payment of Rs. 12,500 to the petitioner within one month of the decision.

17. For the reasons stated above, the writ petition fails, but, on the facts of the case, I do not make any order as to costs. The Rule is discharged.

