(2007) 08 MAD CK 0095

In the Madras High Court

Case No : Writ Appeal No. 1241 of 2004

M. Rajarathinam APPELLANT

Vs

The State Bank of India RESPONDENT

Date of Decision : 18-08-2007

Acts Referred:

Constitution of India, 1950 — Article 226
State Bank of India (Officers Service) Rules, 1992 — Rule 16(3)(1), 19, 20(3), 67, 68
State Bank of India (Supervisory Staff) Service Rules, 1975 — Rule 49, 51

Citation : (2007) 08 MAD CK 0095

Hon'ble Judges : R. Regupathi, J;P.D. Dinakaran, J

Bench : Division Bench

Advocate : Balan Haridas, for the Appellant; S. Jayaraman, for the Respondent

Judgement

P.D. Dinakaran, J.—The appellant is the unsuccessful writ petitioner, who challenged the order of punishment dated 07.02.1995,

withholding of one increment of pay with cumulative effect, which was also confirmed by the appellate authority by proceedings dated 21.06.1996,

pursuant to a disciplinary action initiated against him for three charges namely (i) he had failed to carry out the instructions of the Chief Manager

(Officiating) on 27.10.1993 and refused to open the strong room; (ii) he had failed to disburse the gold loan on 21.09.1993 to the applicants

although the loans were duly sanctioned by the appropriate authority; and (iii) he had submitted false declaration to the Bank in respect of housing

loan sanctioned to him by altering a portion of the bill pertaining to the loan amount without the knowledge of the Engineer and submitted the same

for sanction.

2. Before proceeding further, it is apt to extract the order of the disciplinary

authority dated 07.02.1995 as well as the appellate authority dated

21.06.1996, as hereunder:

(i) The order of the disciplinary authority dated 07.02.1995:

With reference to your statement of defence dated 22.11.1994, in response to our letter No. Dis/Con/0016 dated 29.04.1994, the explanation

offered by you is not convincing and not acceptable.

2. In view of serious nature of charges against you, the punishment of withholding of one increment of pay with cumulative effect is imposed on you

in terms of Rule 49(b) of State Bank of India (Supervising Staff) Service Rules read with Rule 67(b) of SBI Officers Service Rules. Accordingly,

you will not draw your next increment on 01.11.1995. You will be eligible to draw your next increment on 01.11.1996 and thereafter you will

draw your future annual increments on the anniversary date of your increment.

3. Please note that a copy of this letter together with copy of the order will be placed in your service file.

4. You may, if you so desire, prefer an appeal against this order in terms of Rule 51 State Bank of India (Supervising Staff) Service Rules read

with Rule No.69 of SBI Officers Service Rules within 45 days of receipt of this order.

5. Please acknowledge receipt on the duplicate copy of this letter and the order.

(ii) The order of the appellate authority dated 21.06.1996.

With reference to your appeal dated 02.03.1995 against the order of the disciplinary authority dated 3.2.1995, imposing the penalty of withholding

of one increment of pay with cumulative effect. The Appellate Authority had gone through the relevant papers of the case. After careful

consideration of the appeal, the Appellate Authority considers that there is no justifiable reason to interfere with the order of the disciplinary

authority.

2. We enclose the order of the appellate authority to you. Please acknowledge receipt of this letter and order on the duplicate copies. Please note

a copy of the order of the Appellate Authority will be kept in your service file.

3. The appellant/delinquent challenged the order of punishment passed by the disciplinary authority as well as confirmed by the appellate authority

on the main ground that the punishment of withholding of one increment of pay with cumulative effect amounts to a major punishment and if that be

so, the impugned order of punishment is vitiated for not holding a full fledged enquiry by an Enquiry Officer; not rendering a finding on the same;

not giving an opportunity to the appellant/delinquent on the findings that have been arrived at by the Enquiry Officer in compliance with the

principles of natural justice; and not giving second show cause notice as to the proposed punishment. The impugned order of punishment also

suffers from arbitrary and unreasonable exercise of power by the respondents and non application of mind to the extent that the disciplinary

authority having passed an order that the appellant/delinquent would not draw next increment on 01.11.1995 and would be eligible to draw next

increment on 01.11.1996 and thereafter he would draw his future annual increments on the anniversary dates of his increment, ought not to have

awarded a punishment of withholding one increment of pay with cumulative effect.

4. However, the learned single Judge, by order dated 20.02.2003, which is under challenge in the above writ appeal, finding that both the

disciplinary authority as well as the appellate authority have factually found that the charges were proved and such a finding could not be interfered

with by exercising the power conferred under Article 226 of the Constitution of India, dismissed the writ petition, confirming the order of

punishment passed by the disciplinary authority as well as the order of the appellate authority.

5. Both the learned Counsel for the appellant and the respondents reiterated the submissions made before the learned single Judge.

6.1. Concededly, no opportunity was given to the petitioner, nor any Enquiry Officer was appointed to hold an enquiry. However, the disciplinary

authority straight away came to the conclusion that the explanation offered by the delinquent was not convincing and not acceptable and

consequently imposed a punishment of withholding one increment of pay with cumulative effect.

6.2. Of course, the original authority also ordered that the appellant/delinquent would not draw increment on 01.11.1995 but he would be eligible

to draw his next increment on 01.11.1996 and thereafter he would draw his future annual increments on the anniversary dates of his increment.

But, still we are unable to understand as to how the disciplinary authority, in the first limb of paragraph 2 of the original order, had chosen to

impose punishment of withholding one increment of pay with cumulative effect.

6.3. We are therefore satisfied that there is total non application of mind in passing the impugned order of punishment and what was actually

intended is only to impose an order of punishment of withholding one increment of pay without cumulative effect.

6.4. Of course, with the findings rendered above, we could allow the writ appeal and quash the order of punishment.

6.5. But, we make it clear that even in the absence of observation that the appellant/delinquent would not draw next increment on 01.11.1995 and

would be eligible to draw next increment on 01.11.1996 and thereafter he would draw his future annual increments on the anniversary dates of his

increment, the order of the disciplinary and appellate authority to the effect that withholding of one increment of pay with cumulative effect would

not be sustainable in law, as the order of punishment of withholding of one increment of pay with cumulative effect amounts to a major punishment,

which cannot be imposed without affording a reasonable opportunity to the delinquent, holding an enquiry, rendering a finding and issuing a second

show cause notice, in view of the decision of the Apex Court in Kulwant Singh Gill v. State of Punjab reported in 1990 FLR635.

6.6. Rule 67(b) of the State Bank of India Officers Service Rules (for brevity ""the Rules""), deals with penalty, viz., withholding of increment of pay

with or without cumulative effect, which reads as hereunder:

Penalties

67. Without prejudice to any other provisions contained in these rules, any one or more of the following penalties may be imposed on an officer,

for an act of misconduct or for any other good and sufficient reason:

Minor Penalties

(a) censure;

(b) withholding of increments of pay with or without cumulative effect;

(c) withholding of promotion;

(d) recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Bank by negligence or breach of orders.

Major Penalties

(e) reduction to a lower grade or post, or to a lower stage in a time scale;

(f) compulsory retirement;

(g) removal from service;

(h) dismissal.

Explanations:

The following shall not amount to a penalty within the meaning of this rule:

(i) withholding of one or more increments of an officer on account of his failure to pass a prescribed departmental test or examination in

accordance with the terms of appointment to the post which he holds;

(ii) stoppage of increments of an officer at the efficiency bar in a time scale, on the grounds of his unfitness to cross the bar;

(iii) not giving an officiating assignment or non promotion of an officer to a higher grade or post for which he may be eligible for consideration but

for which he is found unsuitable after consideration of his case;

(iv) reserving or postponing the promotion of an officer for reasons like completion of certain requirements for promotions or pendency of

disciplinary proceedings;

(v) reversion to a lower grade or post of an officer officiating in a higher grade or post, on the ground that he is considered, after trial, to be

unsuitable for such higher grade or post, or on administrative grounds unconnected with his conduct;

(vi) reversion to the previous grade or post, of an officer appointed on probation to another grade or post during or at the end of the period of

probation, in accordance with the terms of his appointment or rules or orders governing such probation;

(vii) reversion of an officer to his parent organisation in case he had come on deputation;

(viii) termination of service of an officer;

(a) appointed on probation, in terms of Sub-rule (1) of Rule 16(3)(a);

(b) appointed in a temporary capacity otherwise than under a contract or agreement on the expiration of the period for which he was appointed, or earlier in accordance with the terms of his appointment;

(c) appointed under a contract or agreement, in accordance with the terms of such contract or agreement; and

(d) as part of retrenchment.

(ix) termination of service of an officer in terms of Sub-rule 3 of Rule 20;

(x) retirement of an officer in terms of rule 19.

6.7. The Supreme Court in Kulwant Singh Gill v. State of Punjab reported in 1990 FLR 635, deals with a stoppage of two increments with

cumulative effect.

6.8. Withholding of increments of pay simpliciter without any hedge over it certainly comes within the meaning of minor punishment. But, when

penalty was imposed withholding increment with cumulative effect, it would indisputably mean that the increment earned by the employee was cut

off as a measure of penalty for ever in his upward march of earning higher scale of pay. In other words the clock is put back to a lower stage in the

time-scale of pay and on expiry of respective years where the increment was cut, the clock starts working from that stage afresh. The insidious

effect of such orders of punishment by necessary implication, is that the employee is reduced in his time-scale by corresponding places and it is in

perpetuity during the rest of the tenure of his service with a direction that corresponding years of increments would not be accounted in his time

scale of pay as a measure of penalty. The words are the skin to the language which if pealed off its true colour or its resultant effects would

become apparent, vide Kulwant Singh Gill v. State of Punjab.

6.9. The ratio laid down by the Apex Court in Kulwant Singh''s case, referred supra, is squarely applicable to the facts and circumstances of the

present case assuming the observation rendered in the latter limb of paragraph 2 of the original order is ignored for the purpose of argument. Even

in the absence of the latter limb of observation in paragraph 2 to the effect that the appellant/delinquent would not draw next increment on

01.11.1995 and would be eligible to draw next increment on 01.11.1996 and thereafter he would draw his future annual increments on the

anniversary dates of his increment, the order is read as one withholding of one increment of pay with cumulative effect. Hence, we are of the considered opinion that such punishment of withholding of one increment with cumulative effect notwithstanding the same is classified as a minor

penalty, Rule 67(b) of the Rules is deemed to be a major penalty and any literal interpretation to the impugned order of punishment bringing it

under Rule 67(b) of the Rules cannot stand to the test of reasons, as such garb of stoppage of increment would amount to depriving earning future

increment in the scale of pay even permanently, and therefore it amounts to a major punishment. Hence, the punishment of withholding increment

with cumulative effect cannot be imposed except after holding an enquiry and following the prescribed procedures, otherwise the order of imposing

punishment with cumulative effect would be held to be without jurisdiction and authority of law, as it would be per se illegal and void.

7.1. Once a punishment of withholding increment with cumulative effect is imposed pursuant to a disciplinary action on the appellant/delinquent, it

would amount to a major penalty, attracting the procedure prescribed under Rule 68 of the Rules, which is intended to be followed mandatorily

before imposing a major punishment. It is a settled law that conducting an enquiry de hors the rules is no enquiry in the eye of law. Such a conduct

of enquiry cannot be countenanced that the pretence of an enquiry without reasonable opportunity of adducing evidence both by the Department

as well as by the appellant/delinquent in rebuttal, examination or cross-examination of the witnesses, if examined. The rules admittedly envisage on

denial of the charge by the delinquent officer, to conduct an enquiry giving reasonable opportunity to the presenting officer as well as the delinquent

officer to lead evidence in support of the charge and in rebuttal thereof, giving adequate opportunity to the delinquent officer to cross-examine the

witnesses produced by the Department, and to examine the witnesses if intended on his behalf and to place his version; consideration thereof by

the enquiry officer, if the disciplinary authority himself is not dealing with the enquiry. A report of the enquiry in that behalf to be placed before the

disciplinary authority who then to consider it in the manner prescribed and to pass an appropriate order as for the procedure in vogue under the

Rules. The gamut of this procedure was not gone through and thereafter, the issuance of the second show cause notice based on the findings of the

enquiry officer are all except to be followed scrupulously if the employer proposed to impose a punishment of withholding of increment with cumulative effect.

7.2. Obviously, as conceded by the learned Counsel for the respondents, these procedures have not been followed in the instant case. Even in the

absence of the observation made in the original order of punishment that the appellant would not draw next increment on 01.11.1995 and would

be eligible to draw next increment on 01.11.1996 and thereafter he would draw his future annual increments on the anniversary dates of his

increment, the order of the disciplinary authority as imposed withholding of one increment of pay with cumulative effect, would not by itself survive

in law, as the same is void, ab initio and held to be illegal. We, therefore, find strong force in both the contentions advanced on behalf of the

appellant/delinquent.

8. At this stage, we record the submission made on behalf of the respondents/ employer that the order impugned is intended only to impose a

punishment of withholding of one increment of pay without cumulative effect as evident from the observation made in the latter limb of paragraph 2

of the original order.

9. In the result, the order of the learned single Judge is set aside and the impugned order of punishment dated 07.02.1995 stands quashed to the

extent that there shall be a punishment of withholding of one increment of pay with cumulative effect. The writ appeal is ordered accordingly. If the

petitioner is entitled to arrears, if any, the respondents/employer shall pass appropriate orders within sixty days from the date of receipt of a copy

of this order. However, there shall be no order as to costs.