(2014) 03 AHC CK 0059

In the Allahabad High Court

Case No : C.M.W.P. No. 26155 of 2006

Maharaj Kishore Saxena — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 04-03-2014

Acts Referred:

Citation : (2014) 104 ALR 141 : (2014) 4 AWC 4272 : (2014) 141 FLR 907 : (2014) 2 UPLBEC 1130

Hon'ble Judges : Rajesh Kumar Agrawal, J;Ashwani Kumar Mishra, J

Bench : Division Bench

Advocate : Gulab Chandra, Advocate for the Appellant; A.K. Nigam, Archana Singh, Ashok Trivedi and Vipin Sinha, S.C, Advocate for the Respondent

Final Decision : Allowed

Judgement

Rajes Kumar and Ashwani Kumar Mishra, JJ.—Heard Sri Gulab Chandra, learned Counsel for the petitioner and Sri Ashok Trivedi, appeared on behalf of the respondent bank. For the alleged charges, the disciplinary proceeding has been initiated against the petitioner. The enquiry officer submitted its enquiry report to the disciplinary authority and the disciplinary authority by the order dated 17.9.2004 imposed the following penalty:

"Reduction of 19 increments in the time scale of pay for one year. The officer will not earn increments of pay during the period of such reduction and on expiry of such period, the reduction will have the effect of postponing future increments of his pay", i.e., his basic pay would be reduced from his present pay of Rs. 13,560/- to Rs. 7,100/- i.e., at the beginning of JMG/S-I.

The suspension period of Mr. M.K. Saxena shall be treated as period not spent on duty and he shall not be entitled for increments due during the suspension period.

2. Against the aforesaid penalty order, petitioner filed an appeal which was dismissed by order dated 11.3.2005. Petitioner filed a review application which has been allowed in part vide order dated 12.7.2006. The reviewing authority

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has inflicted the penalty as follows:

Accordingly, in exercise of powers conferred upon me under Regulation 18 of Bank of Baroda Officer Employees'' (Discipline and Appeal) regulation 1976, I consider the review petition favourably to the extent that the penalty imposed on Mr. Saxena is hereby modified as "Reduction of 10 increments in the time scale of pay for a period of 1 year and to reduce his basic pay from Rs. 13560/- to 10160/- p.m. The officer will not earn increments of pay during the period of such reduction and on expiry of such period of reduction, it will have the effect of postponing future increments of his pay.

3. Learned Counsel for the petitioner submitted that after the order of the reviewing authority, in effect, 5 penalties have been imposed which are as under:

(i) Reduction of 10 increments in the time scale of pay for one year.

(ii) Reduction of his basic pay from Rs. 13,560/- to Rs. 10,160/-.

(iii) The officer will not earn increments of pay during the period of such reduction and on expiry of such period, the reduction will have the effect of postponing the future increments of his pay.

(iv) Suspension period shall be treated as period not spent on duty.

(v) He shall not be entitled for increments due during the suspension period.

4. Learned Counsel for the petitioner submitted that as per Regulation-5(3) of the Bank of Baroda Officer Employees'' (Discipline and Appeal) Regulation, 1976 disciplinary authority can impose any one of the penalties as specified in Regulation-4. Thus, only one penalty can be imposed. He further submitted that the penalty in the nature of treating the period of suspension as not spent on duty, is not provided either under the heading of ''major penalty'' or under the ''minor penalty'' therefore, such penalty cannot be levied.

5. Sri Ashok Trivedi, learned Counsel for the respondents submitted that the reduction of 10 increments in the time scale of pay for one year and to reduce his basic pay from Rs. 13,560/- to Rs. 10,160/- p.m. are not two separate penalties but it is one penalty as the effect of reduction of increment is a reduction of pay scale from Rs. 13,560/- to Rs. 10,160/- and the same can also be understood from the penalty order levied by the disciplinary authority.

6. So far as the contention of the learned Counsel for the petitioner that only one penalty can be levied under Regulation 5(3) is concerned, he submitted that the petitioner has not raised the plea before the appellate authority as well as the reviewing authority and is being raised for the first time in the writ jurisdiction. However, in case, if this Court entertain the plea of the petitioner, let the matter may be relegated to the review authority for reconsideration.

7. We have considered the rival contention of the learned Counsel for the parties and perused the record.

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8. The question whether more than one penalty can be imposed or not under the aforesaid regulation, goes to the root of the matter and related to the jurisdiction of the authority, therefore, the same can be entertained, even if it is raised for the first time, in the writ petition. We accordingly propose to entertain the submission made by the learned Counsel for the petitioner in this regard.

9. We find substance in the argument of the learned Counsel for the respondents that the reduction of 10 increments in the time scale of pay for one year and to reduce his scale of pay from Rs. 13,560/- to Rs. 7100/- per month is the one penalty if it is considered with the penalty levied by the disciplinary authority. The effect of reduction of 10 increments results to the reduction of the basic pay. However, we find that the reviewing authority has levied more than one penalty. Regulation 5(3) provides that the disciplinary authority or any authority higher than it may impose any of the penalties specified under regulation to any officer or employee. Therefore, only any of the penalties specified in Regulation-4 can be imposed and that too which is provided under Regulation-4. Since this aspect of the matter has not been examined by the reviewing authority, it would be appropriate to relegate the matter to the reviewing authority to consider the same and pass an appropriate order, in accordance to law, in the light of the observations made above. In the result, the writ petition is allowed. The order dated 12.7.2006 passed by the reviewing authority is set aside. The matter is relegated to the reviewing authority to pass a fresh order, in the light of the observations made above, in accordance to law within a period of 3 months from the date of presentation of certified copy of this order.

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