
(2015) 02 PAT CK 0113

In the Patna High Court

Case No : Civil Review No. 194 of 2014 in LPA No. 1072 of 2013

Manoranjan Prasad

APPELLANT

Vs

Central Bank of India and Others

RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Citation : (2015) LabIC 3577

Hon'ble Judges : L. Narasimha Reddy, C.J.;Vikash Jain, J

Bench : Division Bench

Advocate : Sourendra Pandey, for the Appellant; Ajay Kumar Sinha, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

L. Narasimha Reddy, C.J—This review petition has a fairly big background. The petitioner herein is the Senior Manager, Scale-III of Central Bank of India. Disciplinary proceedings were initiated against him and charge-sheet was issued. Not satisfied with the explanation submitted by the petitioner, the disciplinary authority ordered enquiry. The enquiry officer submitted report, holding that the charges are proved. Second show-cause notice was issued by the disciplinary authority proposing punishment. On consideration of the explanation submitted by the petitioner, the disciplinary authority imposed the punishment of (a) reversion to the post of Manager, Scale-II; (b)(i) reduction of the pay-scale to that of the Manager, Scale-II, to the lowest; b(ii) denial of any increments, whatever, till the date of superannuation. Feeling aggrieved by the order of punishment, the petitioner filed C.W.J.C. No. 6917/10 before this Court. The learned single Judge dismissed the writ petition through order dated 17.5.2013. Aggrieved by that, the petitioner filed L.P.A. No. 1072/13 and the same came to be dismissed on 8.10.2013.

2. The petitioner approached the Supreme Court by filing a Special Leave Application. One of the grounds urged before the Supreme Court was that the respondents have inflicted double punishment on the same charges and that it is

not permissible in law. Taking note of the same, the Hon"ble Supreme Court passed an order dated 26.3.2014, leaving it open to the petitioner to file a review application before this Court. Hence, this review petition.

3. Heard Shri Sourendra Pandey, learned counsel for the petitioner, and Shri Ajay Kumar Sinha, learned counsel for the respondents.

4. The conditions of Service of the Officers of the Central Bank of India are governed by the Central Bank of India Officer Employees (D & A) Regulation, 1976 (In short Regulations). As in the case of any other organization, the Regulations provide for imposition of minor penalties or major penalties, which, in turn, are defined in Rule 4 as under:

4. "The following are the penalties which may be imposed on an officer employee, for acts of misconduct or for any other good and sufficient reasons.

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;
- e) Reduction to a lower stage in time-scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting his pension.

Major Penalties:

- f) Save as provided for in (e) above reduction to a lower stage in the time-scale of pay for a specified period with further directions, as to whether or not the officer will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay;
- g) Reduction to a lower grade or post;
- h) Compulsory retirement;
- i) Removal from service which shall not be a disqualification for future employment;
- j) dismissal which shall ordinarily be a disqualification for future employment.

Explanation--The following shall not amount to a penalty within the meaning of this regulation namely:

- (i) withholding of one or more increments of an officer employee 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 pay of an officer employee at the efficiency bar in a time scale, on the ground of his unfitness to cross the bar;

(iii) non-promotion, whether in an officiating capacity or otherwise, of an officer employee, 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) reversion to a lower grade or post, of an officer employee 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;

(v) reversion to his previous grade or post, of an officer employee 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;

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

(vii) termination of the service--

(a) of an officer employee appointed on probation, 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;

(b) of an officer employee 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) of an officer employee appointed under a contract or agreement in accordance with the terms of such a contract or agreement; and

(d) of an officer employee on abolition of post;

(viii) retirement of an officer employee on his attaining the age of superannuation in accordance with the rules and orders governing such superannuation;

(ix) termination of employment of a permanent officer employee by giving 3 months' notice or on payment of 3 months' pay and allowances in lieu of notice;

(x) termination of employment of an officer employee on medical grounds, if he is declared unfit to continue in bank's service by the bank's medical officer."

5. While the minor penalty can be imposed without conducting disciplinary proceeding, the major penalty can be imposed only after conducting the same. Rule 7(3) of the Regulations, becomes relevant and it reads as under:

7(3). If the Disciplinary Authority, having regard to its findings on all or any of

the articles of charge, is of the opinion that any of the penalties specified in Regulation 4 should be imposed on the officer employee it shall, notwithstanding anything contained in Regulation 8, make an order imposing such penalty."

6. From perusal of the above, it becomes clear that it is in the discretion of the disciplinary authority, to impose the penalty depending upon the gravity of the charges and the finding of the enquiry officer. In its order dated 9.11.2009 the disciplinary authority imposed the following punishments:

1. Reduction to Initial Basic Pay of MMGS Scale-II for a period up to the date of superannuation (i.e. 31.08.2010) with further directions that the officer will not earn increments during the period of such reduction and on the expiry of such period the reduction will have the effect of postponing the further increments of his pay under Regulation 4(f) of the Central Bank of India Officer Employees" (D & A) Regulation, 1976 as amended up to the date. And

2. Reduction to a lower grade viz. MMG Scale-II under Regulation 4(g) of Central Bank of India Officers Employees" (D&A) Regulation 1976 as amended up to date.

Both the punishments will run concurrently and independently.

Further, for the period of suspension from Bank service, Sri Prasad will neither be entitled for any difference between salary he would have drawn but for his suspension and the subsistence allowance paid to him during the said period nor will he be entitled for any benefit or any increment for the suspension period.

7. He was clear in his mind that he was imposing more punishments than one. Incidentally, both the items fall into category of major penalties.

8. It is fairly well established that the disciplinary authority has the discretion to impose any penalty of its choice depending upon the nature of charges and the finding of the enquiry officer. It is also clear that the punishment, whether minor or major, are arranged in the ascending order of seriousness or gravity. The punishment of the highest seriousness occurs in the end of the list. In the wide range of penalties and punishments, the disciplinary authority has to choose the one which, according to him, is proper and justified. However, the disciplinary authority cannot impose more than one punishment of the same category. It amounts to imposition of double punishment for the same charges or findings. Further, it is not permissible in law to impose separate penalty for each charge. The cumulative effect of the finding on each charges must result in selection and imposition of a particular penalty.

9. If one examines the punishments imposed against the petitioner in the order dated 9.11.2009, it becomes clear that on the one hand the penalty of reversion from Senior Manager, Scale-III to Manager, Scale-II, and on the other hand, the punishment of further reduction of pay-scale in Scale-2 to the lowest was imposed. Added to that, the petitioner was denied the benefit of increments for the rest of his career.

10. We are of the view that either on account of lack of clarity of understanding of the relevant provisions of law or otherwise, the disciplinary authority imposed such multiplicity of penalties. The same is not permissible in law.

11. Strictly speaking, the order of punishment has to be set aside in its entirety and the matter must be remanded to the disciplinary authority for fresh consideration. However, since the proceedings are pending for a long time, we propose to set aside the punishment of lesser degree, namely, one of further reduction in scale and denial of the increments for the rest of the career, referable to Regulation-4(g).

12. We are conscious of the fact that review of an order of the Court can be done only under exceptional circumstances, such as that an important fact was missed the consideration of the Court, or when an important point of law was not taken note of. We find that such a circumstance exists in this case.

13. We, therefore, allow the review and set aside the order passed in L.P.A. No. 1072/13. In its place, we pass an order directing that the L.P.A. is allowed and the order 17.5.2013, passed by the learned single Judge in the writ petition is set aside. Consequently, the writ petition is allowed in part, setting aside the punishment referable to Regulation 4(g) and retaining the one referable to Regulation 4(f). In other words, the only punishment that stands imposed against the petitioner shall be the one of reversion from the post of Senior Manager, Grade Scale-III to that of Manager, Grade-2. Interlocutory application, if any, stands disposed of.

There shall be no order as to costs.