
(2014) 11 MAN CK 0001
In the Manipur High Court
Case No : WP(C) No. 208 of 2012

Mary Besa Nokhow

APPELLANT

Vs

The Punjab National Bank

RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

Citation : (2014) 11 MAN CK 0001

Hon'ble Judges : Laxmi Kanta Mohapatra, C.J;N. Kotiswar Singh, J

Bench : Division Bench

Advocate : R.K. Nokulsna, Sr. Advocate, Advocate for the Appellant; A. Deni Sharma, Advocate for the Respondent

Judgement

N. Kotiswar Singh, J.—In the present writ petition, the petitioner, has challenged the order of compulsory retirement passed against the petitioner as a penalty on conclusion of a disciplinary proceeding. The petitioner initially joined service as Clerk-cum-Cashier in the Punjab National Bank in 1981 and was promoted to the post of Computer Terminal Operator (CTO) in 2007. While serving as CTO at the Branch Office at Imphal, petitioner was placed under suspension vide order dated 8.3.2008 and thereafter was served the charge-sheet dated 18.11.2008 containing the following charges as acts of gross misconduct in terms of clause 5(j) of the Bipartite settlement dated 10.04.2002:

"Charge No. 1

You, while officiating as Head Cashier and took over cash charge from Head Cashier Sh.Khupzathng, you did not ensure the checking of physical cash balance where Rs. 92100/- was reflected in 5 rupee coin columns and no coins were held in safe physically. Instead 09 Cheques/withdrawal slips were held which were not valid instruments for payments.

Charge No. 2

You did not take up the irregularities as mentioned in Charges-I with the cash in

charge on the charge taking day ensuring their passing on the same day and adjustment of physical cash balance. You continued the said irregularities till it was detected by Internal Sr. Auditor on 26.2.2007 during inspection of physical cash."

In respect of the aforesaid charges, the petitioner submitted her reply denying the charges as follows:

"Charge No. 1.

Before my statements of defence, I refuse to admit that I took over charge of Head Cashier on 23.02/2008 as mentioned in the last para of the charge sheet. It may be recalled that 25th and 26th February 2008 were declared day of Nationwide Strike by the United Forum of Bank Unions which was suddenly called off in the eleventh hour. And the Head Cashier failed to turn up beyond the scheduled office opening hours. Finally in the interest of the customers and the bank in particular, I discharged my duty as Head Cashier-in-charge on the advice of my superior officer without formal Handing over/Taking over of charges/Cash Keys. Formal entries in the cash balance books/registers were done in the next morning. Hence, the question of ensuring the checking of physical cash in safe doesn't arise.

Charge No. 2

As soon as I discovered the irregularities in the next morning when the Cash Keys were handed over to me, I made immediate adjustment of the said cheques (numbering 9) lying in the safe against the respective accounts. The question of continuation of the irregularity does not rise because the detection of the irregularity by the Internal Sr. Auditor coincided with my discovery of the same. It may also be put on record that there was sufficient balance in my account No. 1067009300008097 during 18/02/08 (date of Ch. No. 024999) and 26/02/08 (when the cheque was finally debited.) I cannot understand why and how the cheque was retained unpaid inside the safe."

In short, her defence is of denial of the allegation that she took over the charge of Head Cashier on 23.2.2008 and contended that she discharged her duties as Head Cashier because of the absence of the Head Cashier on the advice of her superior officers in the interest of the customers of the bank and also claimed that after the irregularities were discovered she made the necessary adjustment of the cheques lying in the safe against the respective accounts.

2. The departmental inquiry was duly conducted in which the petitioner denied the charges against her and she also chose to be represented by a representative of the Union for her defence, as revealed from the proceedings of the Departmental Enquiry, records of which have been submitted before this Court by the learned counsel for the Bank. On conclusion of the inquiry which held the charges against the petitioner proved, the petitioner was served with the notice dated 24.3.2009 to submit her representation in respect of the inquiry

report which was duly submitted on 25.5.2009 reiterating her denial of the charges.

The Disciplinary Authority, thereafter, passed the impugned order of penalty on 16.5.2011 imposing the penalty of compulsory retirement with superannuation benefits and without disqualifying from future employment, in terms of clause 6(c) of Bipartite Settlement dated 10.04.2002. The appeal dated 27.6.2011 preferred by the petitioner against the said order of penalty was rejected by the appellate authority and the penalty imposed by the Disciplinary Authority was confirmed vide order dated 18.2.2012.

3. In the present writ petition, the petitioner has raised certain grounds for challenging the inquiry contending that, (i) no opportunity of engaging defence assistant and producing witness was given to the petitioner; (ii) the authority did not examine any prosecution witness to prove the charge, (iii) no proper inquiry was made as per procedure, (iv) the inquiry had been concluded by making correspondence with the Presenting Officer and (v) there is no evidence on record to prove the guilt of the petitioner.

The petitioner also contended that while proceeding against some other employees of the Bank namely, F. Zimik, Manager and L. Haokip, Senior Manager of the Bank, of irregularities, though the charges levelled against them were proved they were merely imposed lesser penalty of reduction of pay scale, on the ground that the said employees did not commit any act which resulted in financial loss to the Bank.

It has been submitted by the petitioner that in the present case also no financial loss was caused to the Bank because of the alleged irregularity committed by the petitioner and as such, by imposing higher penalty of compulsory retirement, the authorities had acted arbitrarily and in a discriminatory manner.

4. The respondent authorities have filed their affidavit-in-opposition denying the allegations of the petitioner. It was denied that the Departmental Enquiry was not conducted as per the procedure and stated that the petitioner was given all opportunities to defend herself. It was also contended that the petitioner never made any request for production of any witness in her defence and the charges against the petitioner were duly supported. It was also denied that there was any discrimination in imposing penalty in respect of the petitioner and other two officers as they are governed by the Officers Service Regulation whereas the petitioner is governed by Bipartite Settlement where the provisions of penalty are different. It was stated that in respect of the petitioner, as she is a workman, she is governed by Bipartite Settlement, and penalty has been imposed on her as provided under the Settlement. It was stated that in the case of the petitioner, imposition of penalty reduction of pay in two stages was not possible and the punishment was commensurate with the gravity of the charges proved against her.

5. Heard the learned counsel for the parties and also considered the records

relating to the Departmental Enquiry produced by the learned counsel for the Bank. Perusal of the records of the Departmental Enquiry against the petitioner reveal that the inquiry was held on 11.2.2009 at Imphal. The petitioner did not admit the charges against her but as requested by the petitioner one representative of the union was allowed to take part in the inquiry and the Presenting Officer of the Bank produced the relevant documents. However, no other witness was produced on behalf of the authority. When the petitioner was asked by the Inquiry Officer as to whether she admitted the authenticity and genuineness of the documents produced by the Presenting Officer she accepted the documents as authentic and genuine. When asked whether she would like to produce any document or any witness from defence side, the charged officer also declined to do so. The charged officer, i.e. the petitioner, however, gave her version of the incident before the Inquiry Officer in the line taken in her reply to the authority as mentioned above.

6. Having considered the materials on record, the allegations of the petitioner that no proper procedure was followed at the time of holding the inquiry or that she was not given the opportunity to produce witness or of appointing defence assistant is without any basis and contrary to the records and accordingly, rejected. This Court is not therefore, inclined to interfere with the finding of guilt against the petitioner as said can be said to have been proved, in view of the evidence on record, which the petitioner herself did not dispute as regards the authenticity and genuineness and this Court does not find any irregularity in the procedure adopted.

However, there is one aspect of the said proceeding which deserves consideration by this Court. As regards the penalty imposed, this Court is of the view that the authorities have not taken into consideration the relevant factors as provided under the Rules as contended by the petitioner.

7. It is to be noted that in terms of para 12(c) of the Bipartite Settlement which deals with the imposition of penalty, the Disciplinary Authority has to keep in mind certain considerations while imposing penalty viz., the gravity of the misconduct, production of record, if any of the employee and any other aggravating or extenuating circumstance that may exist. The said para 12(c) of the bipartite agreement is reproduced herein below:

"12(c). In awarding punishment by way of disciplinary action the authority concerned shall take into account the gravity of the misconduct, the previous record, if any, of the employee and any other aggravating or extenuating circumstances that may exist. Where sufficiently extenuating circumstances exist the misconduct may be condoned and in case such misconduct is of the "gross" type he may be merely discharged, with or without notice or on payment of a month's pay and allowances, in lieu of notice. Such discharge may also be given where the evidence is found to be insufficient to sustain the charge and where the bank does not, for some reason or other, think it expedient to retain the employee in question any longer in service. Discharge in such cases shall not be

deemed to amount to disciplinary action."

Perusal of the impugned order of penalty dated 16.5.2011, however, does not indicate that the authorities had considered these aspects at the time of imposing the penalty of compulsory retirement with superannuation benefit and without disqualifying from future employment. The order of penalty challenged in the petition merely deals with the charges labelled against the petitioner, the defence plea and the Inquiry report which recorded the charges having been proved against the petitioner. However, at the time of imposing the punishment, the authority had not adverted to any of the considerations mentioned in Para 12(c) of the Bipartite Settlement, quoted above. In that regard, the contention of the petitioner that there was non-application of mind by the Disciplinary authority at the time of imposing the penalty cannot be said to be without any basis. The other contention of the petitioner that the petitioner has been visited with harsher punishment in respect of similar misconduct committed by officers also cannot be said to be without any basis. The contention of the Bank authorities that these two Bank employees, namely, F. Zimik, Manager and L. Haokip, Senior Manager of the Bank were not given the penalty of compulsory retirement as they were serving as officers, even though charges of negligence/misconduct were also proved but it did not involve any financial loss to the Bank and the contention that the petitioner was merely a workman and there is no provision for giving similar penalty, do not seem to be reasonable.

It cannot be said that there was no other penalty other than compulsory retirement that could have been imposed to a workman after the misconduct being proved. Para 6 of the bipartite agreement provides the following kinds of punishment that may be imposed upon finding of guilt of gross misconduct under Para 5(j).

""6. An employee found guilty of gross misconduct may:

- (a) be dismissed without notice; or
- (b) be removed from service with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment; or
- (c) be compulsorily retired with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment; or
- (d) be discharged from service with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment; or
- (e) be brought down to lower stage in the scale of pay up to a maximum of two

stages; or

(f) have his increment/s stopped with or without cumulative effect; or

(g) have his special pay withdrawn; or

(h) be warned or censured, or have an adverse remark entered against him;

or

(i) be fined."

Therefore, since there are other penalties other than dismissal/removal/ compulsory retirement/discharge, the contention of the respondents does not seem to be justified.

Further, merely because the other two officers were officers and governed by different service rules can not be a ground for differential treatment on penalty if the charges are similar. It would be a different thing to contend that the charges were different and as such could attract different penalty.

8. Accordingly, while upholding the finding in the Departmental Enquiry against the petitioner that the charges against the petitioner are proved, this Court would direct the authorities of the Bank to reconsider the penalty imposed by taking into account the various considerations as provided under Para 12(c) of the Bipartite agreement. This Court has directed to do so in view of the fact that the Appellate Authority also did not seem to have kept in mind the aforesaid considerations and also the various grounds raised in her appeal while disposing of the appeal preferred by the petitioner against the order of penalty.

9. The contention of Mr. A. Deni Sharma, learned counsel for the Respondent Bank, based on the decision of the Supreme Court in Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, can be considered only after the Disciplinary Authority has passed the order of penalty in terms of Para 12(c) of the Bipartite Settlement. The Disciplinary Authority is under statutory obligation to take into consideration the factors mentioned in Para 12(c) of the BPS, failing which such an order of penalty will suffer from the vice of non application of mind. This lapse can not be filled by the authority by relying on the aforesaid decision of the Supreme Court. The issue of proportionality of penalty in respect of bank employees as highlighted by the Supreme Court in the said decision can be considered only when the disciplinary authority has discharged the statutory obligation which in the present case, has not been done as discussed above.

10. In the result, the writ petition is allowed by interfering with the impugned order dated 16.5.2011 issued by the Disciplinary Authority and the order dated 18.2.2012 issued by the Appellate Authority to the extent indicated above and are accordingly set aside. The Disciplinary Authority is directed to pass a fresh order of penalty by keeping into mind the considerations as mentioned in Para 12(c) of the Bipartite Settlement as well as the contentions raised in her appeal

preferred to the Appellate Authority on 27.6.2011 as expeditiously as possible, against which the petitioner will have the right to prefer the statutory appeal, if aggrieved with the order of the Disciplinary Authority that may be passed as directed by this Court, in accordance with the rules. Since, the impugned order of penalty dated 16.5.2011 passed by the Disciplinary Authority and the order dated 18.2.2012 passed by the Appellate Authority have been set aside, the petitioner shall be deemed to be under suspension w.e.f. 16.5.2011 till passing of the fresh order of penalty, which period will be dealt with by the authority appropriately as regards entitlement in accordance with the relevant service rules for which the Disciplinary Authority may also invoke the principle of "no work no pay."

11. With the above observations and direction, this writ petition is disposed of.