

(2001) 05 J&K CK 0005

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1217/94

M.G.Abrol

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 31-05-2001

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2001) KashLJ 543 : (2002) 3 SCT 930

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : P.S.Dutta, M.P.Gupta, D.S.Chauhan, Advocates appearing for the Parties

Judgement

Tejinder Singh Doabia, J.—The factual statement contained in para 2 of the petition brings out the service profile as also the circumstances

which led to the petitioner being removed from service.

2. The facts as given in para 2 of the petition are as under:

i. At the relevant time, the petitioner was holding the post of Assistant Manager as Junior Management Grade Scale I at Pouni in the District of

Udhampur.

ii. That one Darshana Kumari is said to have lodged a complaint,

iii. The petitioner was placed under suspension on 16th May'90.

iv. A Charge Sheet was served on the petitioner on 28th May' 90. The petitioner submitted his reply to the said Charge Sheet,

v. That on 8th March 91, the Chief General Manager, State Bank of India, Local Head Office, Chandigarh, served a chargesheet on the petitioner.

The statement of allegations was also made available to the petitioner. It was

proposed to initiate proceedings with a view to inflict major punishment,

vi. The petitioner again submitted his reply on 26th March'91.

vii. As the respondent authorities were not satisfied with the explanation given by the petitioner, an enquiry officer was appointed on 11th April 1991.

viii. The enquiry officer commenced the proceedings on 9th Nov, 91.

ix. On 27th Nov'91, an amended chargesheet was served on petitioner. This was done without seeking explanation from the petitioner.

x. That the petitioner was removed from service on 22nd Nov. 93.

xi. The petitioner preferred an appeal. This was dismissed on 9th Aug 94. This was conveyed to him vide letter dated 10th Aug 94.

3. The petitioner challenges the proceedings which have been held against him and resultantly prays that the final order of removal passed against

him be set aside. These proceedings are being challenged inter alia on the following grounds :

i. That the relevant Rules Regulations or Instructions nowhere define as to what would be covered by the term 'misconduct'. It is submitted that as

this term has not been specified, therefore, the act of petitioner cannot be treated as misconduct in the absence of any specific definition in this

regard. The whole matter, as per the petitioner is left unchecked, uncontrolled and the ultimate decision as per him is likely to be whimsical. It is on

this broad proposition, the very basis of initiating the enquiry proceedings against him are being challenged.

ii. That the principles of natural justice have not been complied with. It is submitted that a chargesheet was already made available to the petitioner

on 8th March 91. Petitioner had submitted his reply to the same on 26th March 91. Thereafter on 27th Nov 91, an amended chargesheet was

served on the petitioner. It is submitted that before this chargesheet could be examined and looked into and made subject matter of enquiry, the

petitioner should have been given an opportunity to file a fresh reply.

4. With a view to highlight this aspect of the matter, it is submitted that the enquiry report was submitted by the Enquiry Officer on 23rd Oct 93. It

is submitted that the action of the respondent authorities in serving a

chargesheet on 8th March 91, to which reply was submitted by the petitioner and then subsequently issuing a fresh amended chargesheet without affording any opportunity to the petitioner to give his reply to the same cannot be sustained.

5. It is further submitted that before the Enquiry Officer, it was not clear as to on what charges, the enquiry is being held i.e. whether this is with regard to the amended charge sheet or this is with regard to unamended charge sheet. It is submitted that on account of this uncertain condition, the petitioner was placed in a disadvantageous position and was not in a position to adduce proper evidence. Petitioner submits that his cause has suffered on account of this action of the respondents.

iii. A serious objection which has been raised is that when the complainant Smt. Darshana Kumari did not appear in the witness box and as she was not summoned and as the petitioner had no opportunity to cross examine her, therefore, the question of recording a finding against him would not arise. If the statement of Darshana Kumari, complainant, is not there, then as per the petitioner, there is nothing which could connect the petitioner with the alleged acts of omission and commission. It is submitted that not only the concerned cashier who disbursed the amount but the so called fake STDR was also not produced. No effort was made to compare the handwriting of the petitioner. It is submitted that these factothers are sufficient for the purposes of quashing the ultimate order of removal.

6. So far as appellate order is concerned, it is submitted that before taking the final decision, the appellate authority was supposed to hear the petitioner. As petitioner was not heard, therefore, the appellate order, it is submitted, would not be sustainable.

7. In addition to the specific plea taken above, it is submitted that there is no allegation of embezzlement and there is no allegation that loss has occurred to the bank. It is again submitted that there is no loss to the customer. In these circumstances, it is submitted that the punishment of removal from service is harsh and is not commensurate with the laps attributed to the petitioner.

8. The Stand taken by the respondents is that the petitioner was given full opportunity to put across his point of view. The principles of natural justice were fully adhered to. The removal of the petitioner is on the basis of acts

of omission and commission attributed to him. It is submitted that these acts are destructive to the very concept of banking business.

9. On merits, it is submitted that smt. Darshana Kumari had a Saving Account with Jyotipuram branch. She made a complaint that two fraudulent withdrawals have been made from her account. These withdrawals were made on 1st Oct' 88 and 9th Dec' 88. The amount being Rs. 7000 and Rs. 1000 respectively. On this complaint, the record was examined. It was found that a fake debit entry of Rs. 8000/ was made allegedly in consideration of STDR of the same amount. This misconduct on the part of the petitioner was found to be serious. Petitioner was placed under suspension. An Enquiry Officer was appointed. Petitioner was associated with the enquiry. As the offence against the petitioner was found to be serious in nature, he was removed from service.

10. As many as five charges were served on the petitioner. These are as under .

- i. Charge No. 1 : You misutilised your official position by issuing a STDR fraudulently i.e without any actual deposit of money in cash or by transfer and later on destroyed the STDR in question after getting it from the depositor,
- ii. Charge No. 2, You withdrew a sum of Rs. 7000 from the Saving Bank Account of constituent under forged signature.
- iii. Charge No. 3: You fraudulently withdrew the amount from a Saving Bank Constituent's Account and credited it into your Current Account.
- iv. Charge No. 4: You tampered with the branch records with the sole aim to conceal the fraud committed by you.
- v. Charge No. 5: Your Current Account maintained at the branch reflects certain cash deposits entries disproportionate to your known source of income.

11. The Enquiry Officer conducted the proceedings. Ultimately a report was submitted. Charges No. 1, 2, 3 and 4 were held to be proved. In doing so, the Enquiry Officer gave following reasons:

- I. The debit entry dated 20.07.88 of Rs. 8000 showed in the pass book of Smt. Darshana Kumari.
- ii. It has been proved that this entry was made by the OPA in his own hand and also was authenticated by him, his plea that this entry has been erroneously written is not acceptable in the presence of other evidences

produced before me and given herein,

iii. The deletion of actual entries for Rs. 7000 and Rs. 1000 and their substitution by fake entry for Rs. 8000 by the OPA.

iv. The OPA held form No. 913283 with him before delivery of other forms to the concerned clerk on 08.12.88.

v. Noting of cancelled and destroyed by the OPA in the STDR Register as on 27.12.88 whereas, it was actually taken out between 07.12.88 and 08.12.88.

In view of my above observation, I hold charge No. as proved.

i. Forgery of Signature of Smt. Darshna Kumari the Account holder, has been proved by Handwriting Expert P""W2 vide his report Ex.P33 which confirmed during the enquiry proceedings:

ii. The OPA posted the voucher himself and issued token under his own initials. The OPA has also passed Ex.PC for payment. It means that the

OPA knows the payee as he has obtained his signature on the back of the voucher when he issued the token,

iii. The OPA deleted both the debit entries of Rs. 1000 + Rs. 7000 with forged signatures of the OPA from the ledger Ex. P39. iv. As the

signature of the A/c holder on the back of Ex. P6 was also forged and the OPA issued token to the person who received the payment, it is,

therefore, clear that the OPA knows the forger.

.....On the basis of documentary evidence as given by the Presenting Officer and failure of the DR/OPA to disapprove the allegation, I hold

charge No. 2 as proved.

1. Forgery of signatures of the Account Holder, Smt. Darshana Kumar on the withdrawal dated 09.12.1988 for Rs. 1000 (Ex. P7) debited to her

Saving Bank Account No. 7782 (Ex.P29) stands proved by the maker (PW2).

ii. The amount of withdrawal (Ex. P7) has been passed for payment by the OPA and stands created to OPA's own Current Account No. 43619

(Ex. P22) vide credited voucher Ex.P3.

iii. Passing for payment by transfer of the amount to his own Current Account by the OPA is sufficient proof that the OPA raised the unauthorized

debit of Rs. 1000 from a constituents account and credited to his own current account.

In view of my above observations, I hold charge No. 3 as proved.

The OPA has submitted this charge is based on allegations levelled in charge Nos. 1, 2 and 3 and since the OPA has denied any involvement. In

these charges as such there is no substance in this charge. Since charge No. 2 and 3 on which charge No. 4 is based have been proved, I hold

charge No. 4 also as proved.

12. As the Presenting Officer had not brought anything material on record visavis charge No. 5, this was held to be not proved. The matter was

then examined by the Appointing Authority. The said authority was of the opinion that the petitioner deserves to be removed from service. An

order to this effect was accordingly passed, as indicted above on 22nd Oct' 93, conveyed to the petitioner vide letter dated 22nd Nov' 93.

13. Before proceeding to take notice of the various submissions made by both sides, it would be apt to notice that the scope of interference in writ

jurisdiction with the findings of fact recorded by Departmental Authorities is limited. This Court is not to act as a Court of Appeal. Such a view

was expressed way back in 1963 in the case of State of Andhra Pradesh and others vs. S. Sree Rama Rao, AIR 1963 SC 1723. This view has

been reiterated again and again. Some of the recent decisions of the subject are as under:

i. Union of India vs. B.K. Srivastava, (1998) 6 SCC 340.

ii. Director General of Police vs. R. Janibasha, (1998) 9 SCC 490.

iii. Inspector General of Police v.s. Thavasiappan, (1996) 2SCC 145.

iv. State of T.N..S.Subramaniam, (1996) 7 SCC 509.

v. T.B. Sanatorium vs. J. Srinivasan, (1998) 8 SCO 572.

vi. Secretary to Government, Home Deptt. vs.Srivaikundathan, (1998) 9 SCC 533.

vii. Union of India vs .A. NagamalleswarRao, (1998) 1 SCC 700.

14. The argument that the term 'misconduct' has not been defined, and therefore, the respondents are left free to take a decision on the basis of their whims and fancies be examined.

15. In Black's Law Dictionary, the term 'misconduct' has been defined as under:

Misconduct: A transgression of some established and definite rule of action, a

forbidden act, a dereliction from, duty, unlawful behaviour wilful in character, improper or wrong behaviour; its synonyms are misdemeanor, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness. Term "Misconduct" when applied to act of attorney, implies dishonesty or attempt to persuade court or jury by use of deceptive or reprehensible methods. Misconduct, which renders discharged employee ineligible for unemployment compensation, occurs when conduct of employee evinces wilful or wanton disregard of employer's interest, as in "deliberate violations, or disregard of standards of behaviour which employer has right to expect of his employees, or in carelessness or negligence of such degree of recurrence as to manifest wrongful intent or even design.

Misconduct in office. Any unlawful behaviour by a public officer, in relation to the duties of his office willful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.

16. If the above definition coupled with the decision given by the Division Bench of Allahabad High Court in the case of Raghunath Chandra

Saxena vs. State Bank of India, Lucknow and another, 1994 (2) SLR 733, is taken note of, then it becomes apparent that the financial irregularity

would definitely fall within the definition of term 'misconduct' as occurring in Rules 48 and 49 of the State Bank of India (Supervising Staff)

Service Rules.

17. In Bhojaraja vs. State of Bank of Mysore, 1996 (4) SLR 784, T.S. Thakur, J, (Who was a Judge of this Court also) considered similar

question and has observed that an act of omission and commission with an employee is charged would not only amount to an irregularity but

misconduct. It was observed that 'whether an act of omission or commission is a misconduct or mere irregularity depends upon meaning in Service

Rules, nature of duties, prejudice suffered by employer. "Financial irregularities were found to be the matters which would be covered by the term

misconduct. Therefore, to say that the acts attributed to the petitioner do not fall within their term 'misconduct' is an argument which cannot be

accepted. The allegation against the petitioner as contained in charge No. 1 is that he misutilized his official position by issuing a STDR fraudulently

without any actual deposit of money in cash or by transfer the later on destroyed the STDR in question after getting it from the depositor. Charge

No. 3 is that the petitioner fraudulently withdrew the amount from a Saving Bank Constituent' account and credited it into his Current Account.

Again, the charge No. 4 is that the petitioner tampered with the Branch Records with the sole aim to conceal the fraud committed by him. So far as

charge No. 2 is concerned, it is stated that the petitioner withdrew a sum of Rs. 7000 from the Saving Bank Account of a constituent under forged

signatures.

18. The charges 1,2,3 and 4 have been held to be substantiated on the basis of evidence which was brought on the record by the bank. In proving

these, the presence of Smt. Darshana Kumari, alleged complainant, was not required to be there. The books of accounts which were available

with the bank were examined and it was on these basis, the finding as noticed above was recorded against the petitioner. The evidence which was

there on the recorded was not refuted. The transfer of the amount from the Saving Bank Account to the account of the petitioner stood fully

established. If this be the position, then to say that the findings have been recorded without their being any material on record, is an argument which

cannot be sustained.

19. So far as appellate order is concerned, something can be said in favour of the petitioner. A Division Bench of Punjab and Haryana High Court,

speaking through Pream Chand Jain, Acting Chief Justice and Sukhdev Singh Kang, J. later Chief Justice of this Court, in the case reported as

M.S. Chouhan vs. State Bank of India, 1985(i) SLR 684, while dealing with the very rules which are now the subject matter of interpretation i.e.

State Bank of India (supervising Staff) Service Rules, 1975 observed that the concerned authority is supposed to pass a speaking order. What

was said in this regard is being quoted below :

A bare perusal of the aforesaid order clearly goes to show the non applicability of mind by the appellate authority and complete disregard to the

procedure laid down in subrule (2) of Rule 51 of the Rules. The Appellate Authority has not indicated any reasons for holding that the findings

arrived at by the punishing authority are justified. The points raised by the petitioner in appeal, which have been commented upon by the punishing

authority have not adverted to at all. In this view of the matter, we are constrained to hold that the order passed by the Authority on the appeal of the petitioner suffers from patent illegality in as much as it does not conform to the procedure laid down in sub rule (2) of Rule 51, with the result that on this ground alone the impugned order of the Appellate Authority is liable to be set aside.

20. In para 10 of the aforesaid judgement, it was mentioned that personal hearing is not required to be given. It may, however, be seen that a

Review Petition was filed in the Punjab and Haryana High Court in the above case on the basis of decision given by the Supreme Court in the case

of Ram Chander vs. Union of India, AIR 1986 SC 1173, In which the view expressed by the Supreme Court was that personal hearing is required

to be given. On the basis of the above view expressed by the Supreme Court, the observations made in para 10 of the judgement in M.S.

Chouhan's case were reviewed and a direction was given to afford personal hearing also.

21. Independently of the above, respondents are supposed to afford opportunity of hearing to the petitioner in terms of the decision given in Ram

Chander's case (supra). The respondent Bank is accordingly directed to redetermine the appeal of the petitioner. This would be done within a period

of six months from the date, a copy of this order is made available to the respondent authorities by the petitioner. The petitioner would be well

within his rights to persuade the respondent authorities that the finding recorded against him are not recorded properly or that the punishment which

has been awarded is not commensurate with the lapse attributed to him. Nothing said in this judgement would be taken as a final expression of

opinion when the appeal is being decided by the respondents. Otherwise, there is no merit in this petition, which is dismissed as such.