(2012) 03 AHC CK 0110

In the Allahabad High Court

Case No : Writ - A No. - 62743 of 2011

M.S. Rana APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 02-03-2012

Acts Referred:

Bank of Baroda Officers Employees (Discipline and Appeal) Regulations, 1976 — Regulation 12(4), 6(2), 7, 7(1), 7(2)
Bank of Baroda, Officers Service Regulations, 1979 — Regulation 20(3)

Citation : (2012) 03 AHC CK 0110

Hon'ble Judges : Sunil Ambwani, J;Manoj Misra, J

Bench : Division Bench

Judgement

Hon''ble Manoj Misra, J.—This is a second innings of the petitioner before this Court. The petitioner, who was an Officer MMG/Scale S-3 in the Bank of Baroda, was inflicted with punishment of removal from service by an order dated 05.08.2004 passed by the Disciplinary Authority. The order of removal was affirmed by the Appellate Authority by its order dated 15.02.2005. Against the order of removal from service, as also the appellate order, the petitioner invoked the writ jurisdiction of this Court by filing Writ Petition No. 30055 of 2005, which was allowed by judgment and order dated 30.9.2010, the operative portion thereof is being reproduced below:

In the result, the order dated 05.08.2004 as well as the Appellate order dated 15.02.2005 are set aside. The matter is remitted to the Disciplinary Authority to pass a fresh punishment order in accordance with the observations as made above. The writ petition is allowed to the extent indicated above.

The allegations against the petitioner, shorn of unnecessary details, on which the articles of charges were framed and the disciplinary proceedings were held, are being reproduced below:

1. He sanctioned and disbursed loans to -110-borrowers under Rice Huller Modernisation Scheme during the period Sept. 01 May, 02. During assets

verification conducted by the Bank on 21.06.2002, 24.06.2002 and 25.06.2002 in respect of -96-cases under the scheme, the following irregularities were observed:

a. In 54 cases, complete assets were not found installed/created. (Annexure-I).

b. In following-3-cases, borrowers were not traceable

i Abrar Ahmad s/o Kallan, r/o Village Gangapur Qadim - loan disbursed Rs. 50,000/- on 26.04.2002. (A/c - 3469)

ii Munney s/o Kallan, r/o Village Gangapur Qadim - loan disbursed Rs. 50,000/- on 26.04.2002. (A/c - 3476)

iii Nanhey Lal s/o Lal Singh, r/o Village Gangapur Qadim - loan disbursed Rs. 50,000/- on 29.04.2002. (A/c - 3480)

c. In following cases, ''Manglam'' Brand of Machinery has been financed, which is not approved by CSIR. As such CSIR may refuse to grant subsidy under the Scheme in these cases:

i. Krishna Pal s/o Shiv Charan-Loan disbursed Rs. 50,000/- on 26.04.2002. (A/c - 3468)

ii. Shiv Charan s/o Ram Charan -Loan disbursed Rs. 50,000/- on 06.05.2002. (A/c - 3510)

iii. Bhan Pratap s/o Naubat Ram -Loan disbursed Rs. 50,000/- on 15.04.2002. (A/c - 3440)

iv. Suresh Chandra s/o Naubat Ram-Loan disbursed Rs. 50,000/- on 15.04.2002. (A/c - 3441)

d. Several units have been financed outside service area of the branch overlooking the vital aspect of supervision, monitoring and recovery of such loans e.g.

e. In all the cases, pre sanction inspection reports have been prepared casually without full details viz without carrying out technical feasibility/economic viability of the unit for a particular area/village; without experience of applicant in the line of business, without ascertaining the requisite power connection/gen set with the borrower, without mentioning the period to which income/expenses/surplus income relate to and without taking into account the personal expenses of the borrower etc. A few random examples are loan accounts of Bhajan Lal, Chandra Bhan Singh, Mohd. Yamin, Dinkar and Daya Ram.

f. In many accounts, back end subsidy has been credited even before repayment of the Bank Loan which is against the provisions of the scheme. A few examples are as under:

g. Bills/Receipts obtained for financed machinery in all the case are without following relevant details.

1. Make/Brand

2. Serial No. of Machine

3. Warranty Clause

4. Test Report of an authorised institute

For example:

Term Loan a/c No. 3486 of Bhajan Lal..

Term Loan a/c No. 3488 of Chandra Bhan Singh

h. Full disbursement has been made in various loan accounts (as per Annexure-I) without ensuring erection and commissioning of machinery in the premises of beneficiary and without ensuring end use of loan.

i. Out of -110-cases disbursed under the Scheme,-24 a/cs amounting to Rs. 12.98 lacs have become NPA within -1-year of disbursement (Annexure-II). Out of remaining accounts, most of the accounts are likely to become NPA due to, large scale improper assessment of techno/economic viability of Project and reckless financing under the Scheme. (Annexure-III).

2. He sanctioned and disbursed various dairy loans without observing bank''s laid down norms. Joint Assets Verification conducted by the branch on 24.06.2002 and 25.06.2002 in respect of -6-dairy loans revealed the irregularities as per Annexure-IV.

2. The Disciplinary Authority, after framing the charges, appointed an Enquiry Officer to enquire into the truth of the aforesaid allegations made against the petitioner. The Enquiry Officer conducted the enquiry proceedings and recorded evidence. After the completion of production of evidence, the Presenting Officer, in his written brief, submitted before the Enquiry Officer that allegations 1(b), 1(d) and 1 (e) are not proved. The Enquiry Officer, agreeing with the Presenting Officer, in its report, held that allegations 1(b), 1(d) and 1(e) were not proved, apart from allegations 1(c) and 1(f) which were also not found proved. The Enquiry Officer, however, found allegations 1(a), 1(g), 1(h), 1(d) and 2 proved.

3. The Disciplinary Authority after receiving the report of the Enquiry Officer, issued a notice expressing its disagreement with the findings recorded by the Enquiry Officer with regard to the charges, which were not found proved i.e. allegations 1(d), 1(e), 1(f) and charges IV and V. After giving notice to the petitioner, the Disciplinary Authority proceeded to substitute the findings on its own assessment of the evidence on record. Ultimately, the Disciplinary Authority by its order dated 6.7.2004 found the aforesaid charges proved. Thereafter, the Disciplinary Authority proceeded to award punishment of removal by its order dated 5.8.2004, which was affirmed by the Appellate Authority by its order dated 15.2.2005.

4. The petitioner challenged the order of removal, as also the order of the Appellate Authority, by filing writ petition No. 30055 of 2005. This writ petition was allowed by order dated 30.9.2010. The order of removal, as also the appellate order was set aside, and the Disciplinary Authority was directed to pass fresh order in the light of the observations made in the judgment.

5. A perusal of the judgment of this court in writ petition No.30055 of 2005 discloses that the order of removal was set aside for the following reasons: (a) that the findings of the Disciplinary Authority that allegations 1(d), 1(e) were proved, could not be sustained for the reason that the Presenting Officer, who is a representative of the Disciplinary Authority, had in his written brief itself admitted that those charges were not proved and agreeing to the submission of the Presenting Officer, the Enquiry Officer had held that those allegations were not proved, therefore, there was no report of the Enquiry Officer with respect to those charges on which there could be a disagreement within the meaning of Regulation 7(2) of the Bank of Baroda Officer Employees'' (Discipline and Appeal), Regulation, 1976; and (b) that looking to the nature of the charges which have been found proved, the petitioner deserved lessor punishment than the punishment, which was awarded by the order dated 05.08.2004. It would be useful to reproduce the findings of this Court recorded in its order dated 30.09.2010 passed in Writ Petition No. 30050 of 2005, which are as under:

The Enquiry Officer held the allegations 1(d) and 1(e) not proved on the ground that Presenting Officer himself was convinced that these charges cannot prove the allegations. In the order dated 06.07.2004 in which the Disciplinary authority has held charges 1(d) and 1(e) proved, he has not even adverted to the written brief submitted by the Presenting Officer, which was the basis for finding of Enquiring Officer as charges not proved. It is true that Disciplinary authority can disagree with the findings of Enquiry Officer on any charge but when no finding was given by the Enquiry Officer on the aforesaid charges referring to the written brief of the Presenting Officer, who himself did not prove the charges, whether it was open for the Disciplinary authority to hold the charges proved on whose behalf in the enquiry the said charges were not proved, is the question to be answered. As noticed above, the Presenting Officer was appointed to prove the charges on behalf of the Disciplinary authority and when the Presenting Officer himself has not proved the aforesaid charges, Disciplinary authority could not have come to the findings that charges are proved sepcifically when it does not even advert to the findings of the Presenting Officer. The question may be asked as to whether in a case where Presenting Officer in spite of there being materials comes to a wrong conclusion that particular charges are not proved, whether the Disciplinary authority is remedy less? The answer to the said question can be found in Regulation 7(1), which provides that the Disciplinary authority for the reasons to be recorded remit the case to the Enquiry authority for fresh or further inquiry. Thus, the findings of the Disciplinary authority that allegations 1(d), 1(e) were proved, cannot be sustained...

As to what punishment is to be awarded to the petitioner on remaining proved charges, is a matter which has to be left to the Disciplinary Authority, which require the matter to be remitted to the Disciplinary Authority to pass a fresh punishment order. However, looking to the nature of the charges which have been proved, we are of the view that the petitioner deserves lessor punishment other than the punishment which has been awarded by order dated 5.8.2004.

6. This Court, in its judgment (supra), had noted that the petitioner had attained the age of superannuation during the pendency of the writ petition. However, by relying on Regulation 20 (3) (iii) of Bank of Baroda, Officers Service Regulations, 1979, it observed that even if a bank officer attains the age of superannuation during the disciplinary proceedings, the proceedings would continue as if he was in service until they are concluded and final orders are passed.

7. After the order of this Court in Writ Petition No. 30055 of 2005, the Disciplinary Authority by its order dated 30.12.2010 passed a fresh order of punishment, the operative portion of which is being reproduced below:

XIX. In view of the above, the undersigned Disciplinary Authority is, therefore, of the opinion that a penalty of "Compulsory Retirement" would suffice to meet the ends of justice in his case.

XX. Therefore, in exercise of the powers conferred upon me under Bank of Baroda Officer Employees'' (Discipline and Appeal) Regulations, 1976, I hereby modify the penalty upon Mr. M.S. Rana as under:

"COMPULSORY RETIREMENT"

The Order would relate back to the earlier Order dated 05.08.2004 passed by the then Disciplinary Authority and would have force and effect from 05.08.2004.

8. The order of compulsory retirement was challenged in Appeal. The Appellate Authority by order dated 02.09.2011 dismissed the appeal and affirmed the order of compulsory retirement w.e.f 05.08.2004, as was passed by the Disciplinary Authority by its order dated 30.12.2010. Aggrieved by the order of compulsory retirement, as also the Appellate order, the petitioner has come before this Court for the second time through this petition.

9. We have heard Sri M.S. Rana (the petitioner-in person) and Ms. Shaili Saxena, holding brief for Sri Vipin Sinha for the respondent Bank.

10. The petitioner challenged the order of compulsory retirement on two grounds: (I) that the order of compulsory retirement takes into consideration allegations 1(d) and 1(e) as proved even though this Court in its earlier judgment had categorically found those two allegations as not proved, therefore, since the order of compulsory retirement has been passed on a composite assessment of the allegations, it stands vitiated for taking into consideration those allegations which should have been kept out of the zone of consideration; and (II) that the order of compulsory retirement could not relate back to the

date 05.08.2004 inasmuch as the earlier order of punishment of removal was set aside by this Court and the authorities were directed to pass a fresh order of punishment. The petitioner further contended that under Regulation 12 (4) of the Bank of Baroda, Officer Employees'' (Discipline and Appeal), Regulations, 1976 where a penalty of dismissal, removal or compulsory retirement from service imposed upon the Officers/Employees'' under suspension is set aside or declared or rendered void in consequence of or by a decision of a Court of law, and the Disciplinary Authority, on consideration of the circumstances of the case, decides to hold further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the officer employee should be deemed to have been placed under suspension by the competent authority from the date of the original order of dismissal, removal or compulsory retirement and should continue to remain under suspension until further orders. Therefore by virtue of sub-regulation 4 of Regulation 12 of the Regulations, 1976, as noted above, the petitioner should be deemed to be in service till the date of his retirement. He, accordingly, contended that the order of punishment, if at all, has to be with effect from the date of the retirement of the petitioner, which in the present case was 30.09.09.

11. Per contra, Ms. Shaili Saxena, appearing for the respondent-bank contended that under Clause 6 (2) of the Bank of Baroda, Officer Employees'' (Discipline and Appeal), Regulations, 1976, the Disciplinary Authority has the power to inquire into the truth of any imputation of misconduct or misbehaviour. She contends that it is not necessary for the Disciplinary Authority to remit the case to the Enquiry Officer for fresh or further enquiry. She contends that with respect to allegations 1(d) and 1(e), the Enquiry Officer had not applied its own mind and had blindly relied upon the written brief of the Presenting Officer, therefore, the Disciplinary Authority was well within its jurisdiction to enquire into the truth of those allegations and come to the conclusion that those allegations were proved.

12. With regard to the date of enforcement of the punishment order of compulsory retirement, Ms. Shaili Saxena placed reliance on a decision of the Apex Court in the case of Chairman-Cum-M.D., Coal India Ltd. and Others Vs. Ananta Saha and Others, . She placed reliance on paragraph Nos. 46 to 50 of the said judgment, the same are being reproduced below:

46. In the last, the delinquent has submitted that this Court must issue directions for his reinstatement and payment of arrears of salary till date. Shri Bandopadhyay, learned senior counsel appearing for the appellants, has vehemently opposed the relief sought by the delinquent contending that the delinquent has to be deprived of the back wages on the principle of "no work -no pay". The delinquent had been practicing privately i.e. has been gainfully employed, thus, not entitled for back wages. Even if this Court comes to the conclusion that the High Court was justified in setting aside the order of punishment and a fresh enquiry is to be held now, the delinquent can simply be

reinstated and put under suspension and would be entitled to subsistence allowance as per the Service Rules applicable in his case. The question of back wages shall be determined by the disciplinary authority in accordance with law only on the conclusion of the fresh enquiry.

47. It is settled legal proposition that result of the fresh inquiry in such a case relates back to the date of termination. The submissions advanced on behalf of the appellants that the result of the inquiry in such a fact-situation relates back to the date of imposition of punishment, earlier stands fortified by the large number of judgments of this Court and particularly in Baliram Prasad Vs. Union of India and others, ; Punjab Dairy Development Corporation Limited and another, etc. Vs. Kala Singh, etc., ; and Graphite India Ltd. and Another Vs. Durgapur Projects Ltd. and Others, .

48. In Managing Director, ECIL, Hyderbad etc. etc. v. B. Karunakar etc. etc., (Supra); and Union of India (UOI) Vs. Y.S. Sadhu, Ex-Inspector, , this Court held that where the punishment awarded by the disciplinary authority is quashed by the court/tribunal on some technical ground, the authority must be given an opportunity to conduct the inquiry afresh from the stage where it stood before alleged vulnerability surfaced. However, for the purpose of holding the fresh inquiry, the delinquent is to be reinstated and may be put under suspension. The question of back wages etc. is determined by the disciplinary authority in accordance with law after the fresh inquiry is concluded.

49. The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is re-instated, it would not automatically make him entitled for back wages as entitlement to get back wages is independent of re-instatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic. (Vide: U.P.S.R.T.C. Vs. Mitthu Singh, ; Secy. Secretary, Akola Taluka Education Society and Another Vs. Shivaji and Others, ; and M.D., Balasaheb Desai Sahakari S.K. Ltd. Vs. Kashinath Ganapati Kambale,).

50. In view of the above, the relief sought by the delinquent that the appellants be directed to pay the arrears of back wages from the date of first termination order till date, cannot be entertained and is hereby rejected. In case the appellants choose to hold a fresh inquiry, they are bound to reinstate the delinquent and, in case, he is put under suspension, he shall be entitled for subsistence allowance till the conclusion of the enquiry. All other entitlements would be determined by the disciplinary authority as explained hereinabove after the conclusion of the enquiry. With these observations, the appeal stands

disposed of. No costs.

13. Dealing with the first submission of the petitioner that the Disciplinary Authority was not justified in placing reliance on allegation Nos.1(d) and 1(e) while passing the order of compulsory retirement, we find that this Court in the earlier round of litigation had recorded a categorical finding that allegations 1(d) and 1(e) were not proved. This Court was of the view that since the Enquiry Officer had not recorded findings with respect to the aforesaid allegations, on its own assessment of evidence, but had presumed that allegations 1(d) and 1(e) were not proved, as the Presenting Officer in his written brief chose not to prove those allegations, therefore, the only course open for the Disciplinary Authority was to remit the case to the Enquiry Officer for fresh or further enquiry. Since that was not done, the findings of the Disciplinary Authority that allegations 1(d) and 1(e) were proved, could not be sustained. From the record of the present petition it is clear that after the order of this Court in Writ Petition No. 30055 of 2005, the Disciplinary Authority again, on its own, without remitting the issue back to the Enquiry Officer, held the said charges to be proved. This, in our view, was in gross violation of the findings recorded by this Court in Writ Petition No. 30055 of 2005. The reliance placed by Ms. Shaili Saxena on Regulation 6(2) of the Bank of Baroda, Officer Employees'' (Discipline and Appeal), Regulation, 1976 is misconceived for the reason that the power with the Disciplinary Authority to himself enquire into the truth of any imputation of misconduct is available so long as he does not appoint any other person as the Enquiring Authority. Once another person is appointed as an Enquiring Authority, and he submits a report, the Disciplinary Authority has to take action on the enquiry report as contemplated under Regulation 7 of the Bank of Baroda, Officer Employees'' (Discipline and Appeal), Regulations, 1976. Thus, in our view, it was not open for the Disciplinary Authority to take recourse to the provisions of Regulation 6(2).

14. We are, therefore, of the view that the Disciplinary Authority fell in error by holding the allegations 1(d) and 1(e) to be proved. This, in fact, is in the teeth of the order of this Court passed in Writ Petition No. 30055 of 2005.

15. Consequently, the order of compulsory retirement, which takes into consideration certain allegations that were not proved, has become vulnerable to judicial review. Since the order of compulsory retirement is based on composite assessment of allegations, and it is not possible for us to hold that the order of compulsory retirement would, or would not, have been passed without those allegations, we set aside the order of compulsory retirement dated 30.12.2010, as also the Appellate Order dated 02.09.2011, which is of affirmance. We further direct the Disciplinary Authority to pass a fresh order in the light of the observations made in the judgment of this court in writ petition No. 30055 of 2005 without taking into consideration the allegations 1(d) and 1(e).

16. So far as the contention of the petitioner that the order of compulsory retirement cannot be passed with effect from the date of the earlier order of

removal is concerned, the judgment of the Apex Court in Chairman-cum-Managing Director, Coal India Ltd. v. Ananta Saha and others (supra) is clear and no further comment is required. Even otherwise since the order of compulsory retirement has been set aside by us, there is no necessity to adjudicate on this issue.

17. At this stage we may note that the petitioner had also prayed for a writ of mandamus so as to treat the petitioner to be in service of the bank till superannuation and to award him all the benefits permissible under law which may include pay and allowances; enquiry bills; medical claims; lease rent; exercise of option to new pension scheme, etc. However, since we are remitting this matter back to the Disciplinary Authority to pass a fresh order, it will be open for the Disciplinary Authority to take decision with regards to the other claims of the petitioner while passing the final order.

18. Subject to the aforesaid observations, the writ petition is partly allowed. The orders dated 30.12.2010 (Annexure No.4) and 02.09.2011 (Annexure No.13) are hereby set aside. The Disciplinary Authority is directed to pass a fresh order in accordance with the observations made herein above. The exercise would be completed by the Disciplinary Authority within a period of two months from the date of production of a certified copy of this order. There is no order as to costs.

Hon''ble Sunil Ambwani, J.

20. I agree.

