
(2012) 05 AHC CK 0231

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 25793 of 2012

M.S. Rana

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-05-2012

Acts Referred:

Citation : (2012) 4 AWC 4997 : (2012) 134 FLR 382

Hon'ble Judges : Satya Poot Mehrotra, J; Mahendra Dayal, J

Bench : Division Bench

Advocate : M.S. Rana, for the Appellant; Vipin Sinha and Vipin Rana, A.S.G.I., for the Respondent

Final Decision : Dismissed

Judgement

Satya Poot Mehrotra and Mahendra Dayal, JJ.—The present writ petition has been filed, filter alia, praying for quashing the order dated 11.5.2012 (Annexure No. 19 to the writ petition) passed by the respondent No. 3, i.e. the Disciplinary Authority. It appears that the petitioner was posted as Senior Branch Manager M.M.G-3 at Bank of Baroda, Rampur Branch from where he was transferred to Agra. The petitioner was placed under suspension in contemplation of disciplinary enquiry. The enquiry was conducted in respect of various charges against the petitioner and the Inquiry Officer submitted its Enquiry Report. The Disciplinary Authority, by the order dated 5.8.2004, imposed punishment of removal from service against the petitioner.

2. Thereupon, the petitioner filed an Appeal before the Appellate Authority. The Appellate Authority, by the order dated 15.2.2005, dismissed the said Appeal filed by the petitioner.

3. The petitioner thereupon, filed a writ petition being Civil Misc. Writ Petition No. 30055 of 2005 before this Court challenging the order dated 5.8.2004 passed by the Disciplinary Authority and the order dated 15.2.2005 passed by the Appellate Authority.

4. By the judgment and Order dated 30.9.2010, this Court allowed the said writ petition, set aside the order dated 5.8.2004 and the order dated 15.2.2005, and remitted the matter to the Disciplinary Authority for passing fresh punishment order in accordance with the observations made in the said Judgment and Order dated 30.9.2010.

5. Pursuant to the said Judgment and Order dated 30.9.2010, the Disciplinary Authority considered the matter and passed an order dated 30.12.2010 imposing penalty of compulsory retirement upon the petitioner. It was further observed in the said order dated 30.12.2010 that the order would relate back to the earlier order dated 5.8.2004 passed by the then Disciplinary Authority and would have force and effect from 5.8.2004.

6. The petitioner filed an Appeal before the Appellate Authority. The Appellate Authority passed an order dated 2.9.2011 dismissing the said Appeal filed by the petitioner.

7. The petitioner thereupon, filed a writ petition before this Court being Civil Misc. Writ Petition No. 62743 of 2011.

8. By the Judgment and Order dated 2.3.2012, this Court partly allowed the said writ petition, and set-aside the said order dated 30.12.2010 passed by the Disciplinary Authority and the said Order dated 2.9.2011 passed by the Appellate Authority. This Court directed the Disciplinary Authority to pass fresh order in accordance with the observations made in the said Judgment and Order dated 2.3.2011 within the period indicated in the said Judgment and Order.

9. Pursuant to the said Judgment and Order dated 2.3.2012, the Disciplinary Authority by the order dated 11.5.2012 imposed penalty of compulsory retirement upon the petitioner. It was further observed that the period of suspension w.e.f. 19.6.2002 to 5.8.2004 would be treated as period not spent on duty. It was further observed that the order would relate back to the first order dated 5.8.2004 passed by the then Disciplinary Authority and would have force and effect from 5.8.2004 i.e., from the date of the first order.

10. The petitioner has filed the present writ petition seeking reliefs, as mentioned above.

11. We have heard Sri M.S. Rana, petitioner in-person, and Sri Vipin Sinha, learned Counsel for the respondent Nos. 2 and 3, and perused the record.

12. Sri Vipin Sinha, learned Counsel for the respondent Nos. 2 and 3 has raised a preliminary objection that against the said order dated 11.5.2012 passed by the Disciplinary Authority, the petitioner has got an alternative remedy under Regulation 17 of the Bank of Baroda Officer Employees' (Discipline and Appeal) Regulations, 1976, and, therefore, the writ petition filed by the petitioner is liable to be dismissed on the ground of availability of alternative remedy to the petitioner.

13. Sri M.S. Rana, petitioner in-person, submits that there is no absolute bar to entertaining the writ petition despite availability of alternative remedy to the petitioner.

14. We have considered the submissions made by the learned Counsel for the parties.

15. Regulation 4 of the aforesaid Regulations deals with the penalties, which may be imposed on an officer employee. One of the major penalties under Clause (h) of Regulation 4 is " compulsory retirement".

16. Regulation 17 of the aforesaid Regulations provides that an officer employee may prefer an Appeal to the Appellate Authority within 45 days from the date of receipt of the order imposing upon him any of the penalties specified in Regulation 4.

17. The petitioner has, thus, got an alternative remedy of filing an Appeal under Regulation 17 of the aforesaid Regulations against the order dated 11.5.2012 whereby penalty of compulsory retirement has been imposed upon the petitioner.

18. Having regard to the facts and circumstances of the case, and keeping in view the factual nature of controversy involved in the present case, we are of the opinion that it will be appropriate that the petitioner be relegated to avail the alternative remedy available to him under Regulation 17 of the aforesaid Regulations.

19. We accordingly dismiss the writ petition on the ground that the petitioner has got an alternative remedy of filing an Appeal under Regulation 17 of the aforesaid Regulations against the order dated 11.5.2012.

20. We may, however, observe that in case, the petitioner files an Appeal under Regulation 17 of the aforesaid Regulations against the said order dated 11.5.2012 within the period prescribed in the said Regulation along with a certified copy of the this order, such Appeal will be decided by the Appellate Authority concerned in accordance with law expeditiously, preferably within a period of two months from the date of filing of such Appeal. Copy of this order will be provided to the petitioner, in-person, as well as the learned Counsel appearing for the respondent Nos. 2 and 3, on payment of usual charges, by 1.6.2012.