(2004) 12 MP CK 0073

In the Madhya Pradesh High Court

Case No : Writ Petition No. 681 of 2003

Narmada Prasad Chowdhary APPELLANT

Vs

Bank of India and others RESPONDENT

Date of Decision : 01-12-2004

Acts Referred:

Citation : (2004) 12 MP CK 0073

Hon'ble Judges : Dipak Misra, J.

Bench : Single Bench

Final Decision : Allowed

Judgement

Dipak Misra, J.

The petitioner, an officer in Junior Management, Grade-I of Bank of India was proceeded in a disciplinary proceeding in respect of the following charges :

While working as Manager of Berkhedi Branch you were residing at Sagar and you were claiming bus fare for commuting between Berkhedi and Sagar. You had claimed HRA of Rs. 764.75 for the months of November, 1997, December, 1997 and January, 1998 without production of rent receipt. However, in February, 1998 you had claimed HRA @ 150% of the permissible limit on the basis of production of rent receipts with retrospective effect for the months of December, 1997 and January, 1998 without actually submitting any rent receipts. You did not seek permission from the competent authority for availing HRA @150% of permissible rate on production of rent receipts from December, 97 and you did not submit particulars like the name of landlord, location of the premises and monthly rent for the house you were purported to be staying during the relevant time to the competent authority.

You vide your letter dated 3-12-1998, i.e., after you were transferred and relieved from Berkhedi branch to Sagar branch, informed the Manager, Berkhedi Branch that you shifted your residence from Sagar to Berkhedi in the month of November, 1998 but did not produce any rent receipt and hence requested the

Manager, Berkhedi Branch to recover excess rent claimed by you as you were paid HRA @150% of the permissible rate on production of rent receipt for the month of November, 1998. You had subsequently refunded Rs. 338.67 by way of Credit Note No. 0488821 dated 16-12-1998 from Sagar Branch. You had vide your letter dated 23-2-1999 forwarded a copy of the rent receipt dated 1-11-1998 for Rs. 200/- for the month of November, 1998.

You were transferred from Berkhedi Branch to Sagar Branch vide transfer order dated 9-11-1998. You vide your letter dated 23-11-1998 claimed and received Rs. 4,000/- as an advance towards packing charges and after reporting for duties at Sagar Branch, you had submitted a claim of Rs. 5,410/- on 11-1-1999 towards packing charges and transportation charges of your houshold goods. You had also claimed Halting Allowance for seven days. Your aforesaid claim was declined by the Sanctioning Authority on 28-1-1999 since you were continuously residing at Sagar. You, therefore, submitted a false representation wherein you stated that you shifted your residence from Sagar to Berkhedi on 1-11-1998 and also submitted false rent receipt for Rs. 200/- dated 1-11-1998 and requested the Bank to consider your transportation etc., claim. However, your said claim was not considered by the Regional Office since you did not shift your residence from Sagar to Berkhedi as claimed by you.

You have thus made a false reporting to the Manager, Berkhedi Branch that you shifted your residence from Sagar to Berkhedi in November, 1998 with mala fide intention to claim packing, transportation expenses. Halting Allowance etc. Subsequently, you submitted a false claim of Rs. 5,410/- towards packing and transportation expenses etc., without actually incurring such expenses which, however, was declined by the Sanctioning Authority. You claimed HRA @ 150% of permissible rate for the period from December, 1997 to November, 1998 without actually submitting any rent receipt and without obtaining any sanction from higher authorities and also submitted bogus rent receipt for the month of November, 1998 in support of your claim that you shifted your residence from Sagar to Berkhedi without actually shifting your residence to Berkhedi and also claimed HRA beyond your entitlement.

The said charge-sheet, dated 16-11-2000, has been brought on record as Annexure-P/9. It is pertinent to mention here there was allegation that the petitioner violated the Regulations 3(1) and 24 of the Bank of India Officer Employees'' (Conduct) Regulations, 1976. The petitioner filed his explanation and ''thereafter an enquiry officer was appointed. The presenting officer on behalf of the Management-Bank examined as many as six witnesses and certain documents were brought on record. On behalf of the delinquent officer five witnesses were examined and certain documents were pressed into service. The enquiry officer vide Annexure-P/27 furnished his report holding that the employer has been able to prove all the three charges against the delinquent officer. The disciplinary authority concurred with the said finding and imposed punishment of compulsory retirement as per Annexure-P/25. Being aggrieved by the aforesaid order the petitioner preferred an appeal vide Annexure-P/29 which was rejected by the appellate authority as per Annexure-P/30. An application for review was filed which met with same fate. A mercy appeal preferred by the petitioner did not bear any fruit.

Assailing the aforesaid orders of punishment and affirmation thereof in appeal Mr. Sheel Nagu, Learned Counsel for the petitioner has contended that the inquiry officer has fallen into grave error by coming to hold that the charges levelled against the petitioner have been proved though as an actual fact, there are materials on record to show that the charges have not been proven. Pyramiding the aforesaid submission it is canvassed by Mr. Nagu that there has been perversity of approach inasmuch as the case of no evidence has been made out. It is urged by him that the law is well settled that suspicion, however grave, cannot take the place of proof or eam the status of proof. The Learned Counsel has submitted that there has been some irregularity by the petitioner in respect of the part 2 of the charge-sheet which can be appropriately described as charge No. 2 but that cannot be regarded as misconduct. It is further putforth by him that as far as Charge No. 3 is concerned, he was actually shifted from Sagar to Berkhedi and claimed transfer allowance from Berkhedi to Sagar, since he was transferred back from Berkhedi to Sagar. It is urged by him that the management witnesses have not been able to specifically depose about the charge but on the basis of conjecture and surmises a finding has been recorded. It is propounded by him conceding for a moment that he was not shifted the claim having been negatived would at best as irregular an irregular act and further the same cannot tantamount to financial irregularity or any fault in that realm. The last plank of submission of Mr. Nagu is that the passing of the order of compulsory retirement disproportionate and requires consideration by this Court applying the doctrine of proportionality.

4-5. Mr. Anoop Nair, Learned Counsel appearing for the Bank. Per contra, has contended that the evidence adduced to prove the charges against the petitioner is adequate and the rigour of proof in a criminal case is not applicable to a disciplinary proceeding. The Learned Counsel has submitted that an effort has been made to dissect the deposition of witnesses on the parameters of criminal jurisprudence which is not permissible, and moreso, when there is acceptable material on record. Hence, contended Mr. Nair, finding recorded by the enquiry officer and affirmation thereof by the disciplinary authority cannot be faulted.

Commenting on availing of transfer allowance it is contended by Mr. Nair that the petitioner had debited the amount to his account and the Bank was compelled to recover the same. It is also put forth by Mr. Nair that the petitioner was punished earlier and imposed a minor punishment and when delinquency continued the present punishment has been imposed. The Learned Counsel has also contended that the doctrine of proportionality is not attracted to the case at hand.

To appreciate the rivalised submissions raised at the Bar, I have carefully perused the inquiry report and the findings recorded by the disciplinary authority. Mr.

Nagu, Learned Counsel for the petitioner has drawn the attention of this Court to the evidence of MW-3, who was the Manager of the Branch of the Berkhedi Branch after the petitioner. A portion of the evidence of the said witness is worth reproducing :

D. A. to MW-3 : If an Officer including Manager wanted to claim HRA @ 150% of normal HRA (otherwise payable), would you insist him to produce rent receipt or other proof of rent paid by him before paying him such HRA. MW-3 : Yes.

D. A. to MW-3 : Do you agree that a rent receipt should at least consist the name of landlord, address of the house and monthly rent ? MW-3 : Yes.

D. A. to MW-3 : I am showing you ME-1 (13 pages), particularly salary sheet of February, 98. In this month rent of Rs. 1865.04 was paid to Shri N. P. Choudhary and a remark had been written in remark column that arrears of HRA @ 150% w.e.f. 1-12-1997. Yesterday you have deposed that you have signed this salary sheet. Please tell whether you have paid 150% of normal HRA for February, 1998 and arrears for December, 1997 and January, 1998 after verifying the rent receipt submitted by Slvri Choudhary ? MW-3 : Yes.

D. A. to MW-3 : Can you recollect whether those rent receipts were having details such as name of landlord, address and rent amount ? MW-3 : Yes, the rent receipts were consisting of all the required details.

D.A. to MW-3 : I am showing you ME-8, please tell LA. whether it is signed by you. MW-3: Yes.

D. A. to MW-3 : In ME-8, you have mentioned that no rent receipt is available on Bank''s record. During cross-examination, you deposed that you have paid the HRA @ 150% of normal HRA for February, 1998 and arrears for December, 1997 and January, 1998 to Shri Choudhary after verifying the rent receipts. Is it not possible that the rent receipts were misplaced somewhere in the Branch. MW-3 : It may be possible.

At this juncture it is worthwhile to mention that the claim of monthly rent at 150 per cent of normal house rent allowance, relates to December, 1997 to January, 1998 and February, 1998. It is not disputed that the petitioner was paid 150 per cent as normal house rent allowance from March, 1998 to October, 1998. Mr. Anoop Nair has also accepted the said factual position. The crux of the matter is whether the petitioner had taken permission or not. It has come out in the evidence of MW-6, who has admitted that there is no stipulation for taking permission for shifting from normal house rent allowance to 150 percent of normal house rent allowance. A circular has also been brought on record which was put to the aforesaid witness. On a perusal of the said circular it is perceptible that no permission was necessary. In view of the aforesaid and further in view of the fact that there is admission by the MW-3 that rent receipts were produced for aforesaid three months the amount was sanctioned after verifying the rent receipts. Hence, I am inclined to hold that this charge had not been proven. As far as claim for the month of November is concerned, it is submitted by Mr. Nagu that it was a mistake as the petitioner was transferred from Sagar to Bankhedi and salary bill was prepared for that month and after the petitioner came to know about the same he refunded Rs. 338.67 the full amount. It can at best be regarded as slip or irregularity. It is worth noting here the petitioner requested the Bank to deduct the amount and when the Bank did not deduct he deposited it in favour of the Bank.

The third facet relates to availing of transfer allowance. Mr. Nagu has commended me to the evidence of MW-1. A portion of the evidence of the said witness is worth reproducing :

D.A. to MW-1 : Whether you have received any specific communication or proof that the CO was not residing at Berkhedi in the month of November, 1998 ?

MW-1 : There was no specific communication to the above effect." 9A. Placing reliance on the same it is highlighted by Mr. Nagu that if this evidence is taken into consideration it would be clear that the decision has been taken on conjecture. Mr. Nagu has also commended me to the evidence of the defence witness DW-1, Suresh Kumar Ahirwar, Landlord at Sagar, who has stated that the delinquent officer had shifted on 1st November, 1998. This evidence has been appreciated by the inquiry officer. this Court while exercising extraordinary jurisdiction would not enter into the area of appreciation the evidence. As far as other two charges are concerned, I have reproduced the evidence to show that the management witnesses have stated in a categorical and unequivocal manner that the rent receipts were produced and no permission was required. In respect of this charge it is in the realm of appreciation of evidence and the inquiry officer has accepted one part thereof. This acceptance cannot be treated to be perverse and hence, I am inclined to accept that the Management had been able to prove this charge. It is further noteworthy to mention here that the petitioner had claimed shifting charge and thereafter recovery has taken place. It is submitted by Mr. Nagu as the shifting include package and the petitioner has done package, he had claimed the amount. As the picture is not clear in that regard, I am inclined to give some leniency to the petitioner.

The question that emerges for consideration is whether on the basis of this charge punishment of compulsory retirement should have been imposed. I may repeat at the cost of repetition, the first charge had not been proved, the second charge is really a flimsy one as the petitioner had immediately rectified by depositing the amount and the sum involved is Rs. 338.67 which he was getting house rent allowance and as it was made a part of the monthly salary bill when he was transferred which could not have been made and the third charge as is indicated earlier has been really proved. Mr. Nair, Learned Counsel for the Bank would like to take note of the earlier punishments. That was not a part of the charge-sheet. Be that as it may, the present charges are to be taken into consideration for the purpose of punishment. It is discernible that no notice of the past misconduct was given to the delinquent. In the case of the State of

Mysore Vs. K. Manche Gowda, the Apex Court has held as under :

8. Before we close, it would be necessary to make one point clear. It is suggested that the past record of a Government servant, if it is intended to be relied upon for imposing a punishment, should be made specific charge in the first stage of the enquiry itself and if it is not so done, it cannot be relied upon after the enquiry is closed and the report is submitted to the authority entitled to impose the punishment. An enquiry against a Government servant is one continuous process, though for convenience it is done in two stages. The report submitted by the Enquiry Officer is only recommendatory in nature and the final authority which scrutinises it and imposes punishment is the authority empowered to impose the same. Whether a particular person has a reasonable opportunity or not depends, to some extent, upon the nature of the subject-matter of the enquiry. But it is not necessary in this case to decide whether such previous record can be made the subject-matter of charge at the first stage of the enquiry. But, nothing in law prevents the punishing authority from taking that fact into consideration during the period second stage of the enquiry, for essentially it relates more to the domain of punishment rather than to that of guilt. But what is essential is that the Government servant shall be given a reasonable opportunity to know that fact and meet the same. In view of the aforesaid pronouncement submission of Mr. Nair cannot be taken into consideration as it is clear as noon day that nothing was brought to the notice of the petitioner. Hence, the matter has to be adjudged on the factual backdrop of the charge-sheet of the present case. It is not a case where real financial irregularity had been committed. The petitioner was working as a Manager for two years. He has served in the Bank as an Officer for 19 years. Punishment for compulsory retirement it adjudged in the backdrop of the present charges appears to be excessive, disproportionate and shocking to the conscience. I am conscious when a delinquent officer of a bank is proceeded against the concept of rigorousim would ordinarily come into play but that would depend upon gravity of misconduct. In the present case, as I have indicated hereinbefore, one charge was not proved and the second was depending upon fact and the third charge was though proven, really does not warrant such a severe punishment.

In view of the aforesaid analysis, I am inclined to quash the order of compulsory retirement, Annexure-P/25 and affirmation thereof, contained in Annexure-P/30. As a logically corollary all subsequent orders passed on review and mercy petition would also pave the path of extinction. The matter is remitted to the disciplinary authority to impose adequate punishment which would be proportionate to the delinquency proved. However, the disciplinary authority would not impose the punishment of dismissal, removal, compulsory retirement and reversion. The order of punishment shall be passed after reinstating the petitioner in service. The petitioner shall not be entitled to any backwages.

The writ petition is allowed to the extent indicated hereinabove. There shall be no order as to costs.

