(1998) 05 AHC CK 0121

In the Allahabad High Court

Case No : C.M.W.P. No. 9152 of 1989

Ram Autar Garg (Decd) through LRs — APPELLANT

Vs

General Manager (Personal Division) Punjab National Bank, New Delhi and others — RESPONDENT

Date of Decision : 11-05-1998

Acts Referred:
Constitution of India, 1950 — Article 226, 311(2)

Citation : (1998) 3 AWC 1833 : (1999) 1 LLJ 1294

Hon'ble Judges : M.L. Singhal, J;D.S. Sinha, J

Bench : Division Bench

Advocate : A.K. Singh, Y.K. Saxena, Y. Chaturvedi, Suman Sirohi and O.P. Tiwari, for the Appellant; V.B. Singh and K.L. Grover, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Singhal, J.—This is a petition under Article 226 of the Constitution of India, for issuance of a writ in the nature of certiorari quashing the order dated 14.6.1988 (Annexure-23), passed by the Deputy General Manager (East U. P. Zone). Punjab National Bank, Lucknow (respondent No. 2), removing Shri Ram Autar Garg (since deceased) from service, and order dated 25.12.1988 (Annexure-24), passed in appeal by the General Manager (Personal Division). Punjab National Bank, New Delhi, respondent No. 1, dismissing the appeal.

2. During the pendency of the petition, the petitioner Ram Autar Garg died, hence his widow, his daughters and sons, as heirs and legal representatives of the deceased, have been brought on the record, A Division Bench of this Court hearing the writ petition, on 28.10.1996 dismissed the writ petition observing that since the petitioner has died, the petition does not survive. The heirs of the deceased carried the matter to the Hon''ble Supreme Court by way of Smt. Usha Garg and others v. General Manager (Personal Divisionl. Punjab National Bank and others. Civil Appeal No. 6925 of 1997. In the said appeal, the Hon''ble Supreme Court set aside the aforesaid order dated 28.10.1996 dismissing the

petition and gave further direction that the writ petition may be disposed of within six months from the date of communication of the order. The order of the Hon''ble Supreme Court was received in the Court here, on 13th November. 1997. The hearing in the writ petition commenced on 21st April, 1998 and concluded on 23.4.1998. The writ petition has not been formally admitted as yet, but the counter and rejoinder-affidavits have already been exchanged, and with the consent of the learned counsel for both the parties, the writ petition is disposed of finally.

3. We have heard Shri Y, K. Saxena, learned counsel for the petitioner and Shri K. L. Grover, learned counsel for the respondents at length.

4. The petitioner Shri Ram Autar Garg during the relevant period, viz., June, 1979, to April, 1982 was posted as Manager al Branch Office Auraiya of the Punjab National Bank. District Etawah. Certain irregularities and misconduct were detected by the Department in the functioning of the petitioner and so, the petitioner faced three departmental enquiries. In all the three enquiries, the charges were found proved against the petitioner. On the basis of the findings in the first charge sheet dated 12,7.1982 (Annexure-1), the two increments of the petitioner were stopped. In view of the gravity of proved charges in the second charge-sheet dated 18.4.1983 (Annexure-2), the penalty of reduction to a lower grade was imposed, and the petitioner was reduced from M.M.G. Scale II to J.M.G. Scale I. Shri Ram Autar Garg did not have any grievance against the punishment imposed on the aforesaid two enquiries. On the basis of the charges proved In the 3rd charge-sheet dated 7th March. 1987 (vide Annexure-4), by the impugned order dated 14th June. 1988 (Annexure-24|, he was removed from service by the respondent No. 2 and the appeal preferred by him was also rejected by the respondent No. 1. Shri Ram Autar Garg, now his heirs and legal representatives have grievances against these orders removing Shri Ram Autar Garg from service.

5. Shri Y. K. Saxena has challenged the impugned orders on the following grounds :

(1) The charges contained in the 3rd charge-sheet were the same as were in the first and the 2nd charge-sheets. On the same charges Shri R. A. Garg had been awarded punishment earlier and so he could not be awarded punishment again on those very charges in the 3rd charge-sheet, the principle of double jeopardy was fully attracted in the case.

(2) The enquiry proceedings have been ex parte.

(3) No opportunity to show cause was afforded to Shri R. A. Garg before the punishment of removal from service was awarded to Shri Ram Autar Garg.

(4) The punishment of removal from service to Shri Ram Autar Garg is too harsh.

Each of these four grounds is dealt with in seriatum.

6. It is necessary here to reproduce the charges contained in the 3rd charge-sheet. The 3rd charge-sheet dated 27th March. 1987 (vide Annexure-5) contains the following two charges against Shri Ram Autar Garg :

Firstly. Shri Garg in connivance with one Shri R. C. Agrawal, the then Accountant of the Branch issued two letters of warranty for Rs. 7,10,000 and Rs. 2,02,500 on 30th November, 1981 and 28th December, 1981 respectively in favour of U. P. F. C.. Kanpur on behalf of M/s. G. B. Laboratories (Private) Limited, Dibiapur. Etawah for a period of one year and further issued undated guarantees extending the period of the aforesaid two guarantees for a further period of one year, without any sanction from the competent authority, failed to obtain proper documents, collateral securities, etc., did not charge any guarantee commission from the party, as prescribed by the Bank, and nor was the transactions recorded in the Bank''s Account.

Secondly, Shri Garg allowed clean overdrafts to three persons, namely, Prer Prakash Sharma. Shri Shaukat Alt and Shri Shanti Prasad Jain without obtaining P.N.B. 306 and failed to recover the same as stipulated by the Bank.

7. Coming to the first argument of the learned counsel for the petitioner, the learned counsel contended that the first charge of the third charge-sheet, referred to above, is same as the charge No. 3 of 1st charge-sheet and the 2nd charge-sheet, and the second charge same as to charge No. 1 of 2nd charge-sheet and charge No. 3 of the first charge-sheet. We have perused the charge No. 3 of the first and the second charge-sheet, charge No. 1 of 2nd charge-sheet, and charge No. 3 of the first charge-sheet. We are in perfect agreement with the learned counsel Shri K. L. Grover appearing on behalf of the respondents that the articles of charges in the three charge-sheets are independent and distinct, the two charges which appear in the third charge-sheet were not the subject-matter of the first and the second charge sheet.-Simply because a label or a heading has been assigned to a particular charge by the Enquiry Officer or because the charges in respect of different transactions were of the same nature would not render the charges one or same. In fact, the very transaction which is a subject-matter of the subsequent charge-sheet, must be the subject-matter of the earlier charge-sheet to attract the principle of double jeopardy, in charge No. 3 of the first charge-sheet (vide Annexure-1), one of the imputations against Shri Garg was that "fake guarantee has been obtained". As revealed by further averments in the charge, in the C. C. Account of Shri Munni Lal, guarantee of one Shri Sada Shiv Dixit was taken, but Shri Dixit denied having guaranteed the said account. But here the, subject-matter of the 3rd charge-sheet is quite different, here Shri Ram Autar Garg who accorded undue accommodation to M/s. G. B. Laboratories. Kanpur, issued two letters of Bank Guarantee, one for Rs. 7.10.000 and another for Rs. 2,02,500 without any proper authorisation, the entries relating thereto did not find any place in the Bank records at all. The 3rd charge of the 2nd charge-sheet as pointed out by the learned counsel for the respondent is also distinct. It stipulated that Shri

Garg misused his official position and abetted the borrowers to obtain finance from the Bank. But in the 3rd charge-sheet the 2nd charge-sheet against Shri Garg is that he allowed clean overdrafts to three persons, namely. Shri Prem Prakash Sharma, Shri Shaukat Ali and Shri Shanti Prasad Jain. However, in the second charge of the third charge-sheet, the matter with respect to these persons was totally different. Shri Garg was charged for unauthorisedly debiting the D.Ds, to Current Account of the parties, instead of debiting the same to protested account as per prescribed rules. Shri Garg committed irregularities by not debiting the amount of returned D.Ds. to the protested accounts but by debiting the same to the parties'' Current Account which did not have sufficient balances at that time, and thus, creating clean D.D. not backed by any security. Thus, the transactions in the three charge-sheets were entirely different and distinct and it cannot be said that the 3rd charge-sheet covers those very matters which were the subject-matter of the first and second charge-sheet. The learned counsel for the petitioner also vehemently argued that through letter dated 19th March. 1993 (vide Annexure-6) the respondents'' department solicited reply of Shri R. A. Garg about the aforesaid two Bank Guarantees, which was replied to by Shri R. A. Garg through letter dated 26th March, 1983 (vide Annexure-7), but the department did not frame charge against Shri R. A. Garg in respect of the two aforesaid guarantees in the 2nd charge sheet. So it was not open to the department to frame charge against Shri R. A. Garg after a period of four years. About this contention of the learned counsel for the petitioner, it may be observed that in his reply dated 26th March, 1983 (vide Annexure-7) Shri R, A. Garg pleaded complete ignorance about the aforesaid two guarantee letters. It may also be observed that there is no rule or regulation which precluded the respondents from framing charge against Shri R. A. Garg in respect of the two guarantees, after certain period. So the first grievance of the learned counsel of the petitioner is devoid of force and merits rejection.

8. Coming to the second contention, viz., the enquiry against the petitioner has been ex parte, the same is also not borne out from the record. On the other hand, the record shows that repeated opportunities were given to Shri R. A. Garg by the Enquriy Officer, the charged officer himself did not avail the opportunity. When the charge-sheet was served on Shri R. A. Garg (vide Annexure-5). he was required to submit reply within a period of fifteen days. Again by letter dated 16th May, 1987 (vide Annexure-17), Shri R. A. Garg was again advised to submit submissions of defence within seven days. In paragraph 19 of the rejoinder-affidavit Shri R. A. Garg admitted that he was allowed to inspect the records on 28.5.1987, however, he was not supplied with copies of the documents desired by him. Shri R. A. Garg on 11th August. 1987 addressed a letter to the Enquiry Officer (vide Annexure-20), wherein he stated that the present enquiry had been prejudicially instituted relating to M/s, G. B. Laboratories Limited and others which was already covered in the second enquiry. He was filing an appeal separately to the General Manager (Administration). Head Office. New Delhi against the order dated 23rd June. 1987 passed by the D.G.M.. Lucknow for

holding enquiry on the basis of the 3rd charge-sheet. Hence he was not participating in the enquiry pending decision of the General Manager (Administration). The enquiry report dated 11th December, 1987 (Annexure-22) also shows that Shri R. A. Garg was given full opportunity to present his case before the Enquiry Officer, he was given opportunity to take the assistance of one Shri R. K. Avvasthi, as desired by him. In the preliminary hearing of 21st July. 1987. Shri R. A. Garg did not raise any objection to the holding of the present enquiry, instead he duly participated in the proceedings. The Enquiry Officer was not bound to slay the proceedings pending the appeal said to have been preferred by Shri R. A. Garg before the General Manager (Administration). Shri Garg noted on the proceedings before the Enquiry Officer that he would note all the proceedings under protest. In view of the above evidence on the record, it cannot be said that the enquiry proceedings against Shri R. A. Garg were ex parte proceedings. On the other hand, record shows that Shri R. A. Garg was given full and ample opportunity to defend himself in the proceedings, which he himself did not avail. The second argument raised by the learned counsel for the petitioner also, therefore, fails.

9. Coming to the 3rd argument, viz., no opportunity to show cause was afforded to Shri R. A. Garg before the punishment of removal from service was awarded to him and copy of the enquiry report was not supplied to him, the learned counsel relied upon the decision of Hon''ble Supreme Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., . para 7. About this argument of the learned counsel for the petitioner, it may be observed that the provisions for issuance of show-cause notice in Article 311(2) has been dispensed with by 42nd Amendment. Under the proviso to Article 311(2) as it exists now, where it is proposed after enquiry to impose upon a delinquent employee any penalty of dismissal, removal or reduction in rank, such penalty may be imposed on the basis of the evidence adduced during such enquiry. The said proviso specifically further states it shall not be necessary to give such a person any opportunity of making representation on the penalty imposed. In the present case, there is no allegation that in the impugned order (Annexure-23) whereby Shri Garg has been removed from service, any evidence except that adduced during the course of enquiry has been considered. As regards the decision of the Hon''ble Supreme Court in Managing Director E.C.I.L. v. B. Karunakar (supra), it may be observed that as reiterated in the Judgment itself, the requirement of supplying the copy of the enquiry report to a delinquent employee is prospective, that is, in cases where the punishment has been proposed after 20th November, 1990, the date when the judgment in Union of India and others Vs. Mohd. Ramzan Khan, , was delivered. In the instant case, the order of removal was passed on 14.6.1988 and so the impugned order cannot be said to be violative of the principles of natural justice simply because no copy of the enquiry report was served on Shri Ram Autar Garg. Thus, the 3rd grievance of the petitioner against the impugned order urged by the learned counsel for the petitioner, has also no substance and deserves rejection.

10. Coming to the last contention of the learned counsel for the petitioner that the punishment of removal from service to Shri R. A. Garg is too harsh, the learned counsel relied upon the decision of the Hon''ble Supreme Court in B. C. Chaturuedi v. Union of India. 1995 (6) SCC 750. The learned counsel referred to para 18 of the judgment which runs as under :

"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

Thus, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court then only the Court may interfere with the punishment awarded to the delinquent employee.

11. Looking to the facts of the present case, the punishment imposed by the disciplinary authority on Shri R. A. Garg cannot be said to be severe or which shocks the conscience of the Court. Shri Garg issued two letters of Bank Guarantees for Rs. 7.10.000 and Rs. 2,02.500 in favour of M/s. G. B. Laboratories without any sanction from the competent authority, did not obtain proper documents/collateral securities, also did not charge any guarantee commission. The climax of all is that no entry with regard to issuance of these two Bank Guarantees was made in any records of the Bank- Such acts of a Bank employee, specially, employees who are holding responsible position like the Managers of the Bank, shakes the confidence of the people in the credibility of the banking system itself. So, the penalty of removal from service awarded to Shri R. A. Garg in view of the facts of the case does not require interference.

12. The learned counsel for the petitioner argued that the respondent department has not paid subsistence allowance to Shri R, A. Garg in the revised scale. Shri K. L. Grover, learned counsel for the respondent Bank staled that the Bank authorities have no objection and they will pay the dues in the revised scale, if required by the rules. We are not passing any order in this regard. It is expected that the respondent Bank shall pay the arrears of the subsistence allowance in the revised scale, if permissible under the rules, to the heirs and legal representatives of Shri R. A. Garg.

13. In the result, the petition has no force and merits dismissal, and accordingly, it is dismissed. No order as to costs.

