(2016) 05 MP CK 0022

In the Madhya Pradesh High Court

Case No : W.P. No 18100 of 2015

Ranjeet Singh Kumpawat — APPELLANT

Vs

Central Madhya Pradesh Gramin Bank — RESPONDENT

Date of Decision : 13-05-2016

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2016) 3 MPLJ 517

Hon'ble Judges : Sujoy Paul, J.

Bench : Single Bench

Advocate : Manoj Sharma, Advocate, for the Petitioner; A.C. Thakur, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Sujoy Paul, J.—In this petition filed under Article 226 of the Constitution, petitioner has challenged the charge-sheet dated 15.5.2015/19.6.2015 (Annexure P/1) and the supplementary charge-sheet dated 29.1.2016 (Annexure P/1-A).

2. Shri Manoj Sharma, learned counsel for the petitioner submits that while working as Scale-III Officer at Chhindwara, the petitioner was transferred to Pipariya, main branch, Hoshangabad. The petitioner''s work was appreciated by the Bank throughout. He was even given additional charge of Regional Manager at Mandsaur Region. In May 2014, the respondent No.3 became Chairman of the Bank on deputation. He issued transfer order dated 5.8.2014, whereby the petitioner is transferred from Mandsaur to Chhindwara in utter disregard to transfer policy. Petitioner''s representation for cancellation of that transfer on medical grounds could not find favour. Respondent No.3 issued a show-cause notice dated 11.8.2014 to the petitioner. The petitioner was threatened that if order is not implemented, disciplinary proceedings may be initiated against him. Petitioner joined at Chhindwara on 14.8.2015. The petitioner applied for medical leave and had undergone Angioplasty at Indore. In October 2014, petitioner

joined the Bank after the said operation and bed-rest. Then, he was deputed to Gwalior Region on 30.12.2014. While posted at Gwalior Region, the petitioner was intimated that he was placed under suspension with immediate effect. The original suspension order was not communicated/ served on the petitioner till date. The petitioner preferred a representation for revocation of suspension on 26.02.2015 (Annexure P/10). The same was followed by reminders which are cumulatively filed as Annexure P/11.

3. Petitioner''s representation was rejected by Order dated 03.06.2015 (Annexure P/12). Shri Sharma further submits that as per the procedure prevailing in the Bank, if any audit objection is raised by the audit department during internal audit of the branch then opportunity is being given to the concerned officer for clarification/ rectification of the irregularity pointed-out by the audit team. The petitioner clarified the objection which were pointed out to him by the audit team by communication dated 23.8.2014 (Annexure P/13). The petitioner assumed that in view of the clarification aforesaid, the matter will come to an end.

4. Learned counsel for the petitioner submits that to petitioner''s utter surprise, impugned charge-sheets are issued which shows that it is a malicious exercise of power. Shri Sharma, drew attention of this court to the supplementary charge-sheet also which is issued during pendency of this petition. He assailed the charge sheet on twin counts. Firstly, it is urged that in the aforesaid factual backdrop, it is clear that respondent No.3 is personally annoyed and vindictive against the petitioner. Hence, the charge-sheet is outcome of malafide on the part of respondent No.3. For this, reliance is placed on the judgment of Supreme Court in the case of State of Punjab v. V.K. Khanna and Others, (2001) 2 SCC 330. Secondly, it is urged that supplementary charge-sheet is bad in law because it contains allegations of more than 9-10 years old. This shows malafide and arbitrary exercise of powers by the respondents. Shri Sharma relied on the document at page-24 with the rejoinder in support of his contention that audit team found everything in order in relation to petitioner''s tenure at Mandsaur. Lastly, he placed reliance on the resolution of Board of Directors dated 18.12.2012 (at page 27 with the rejoinder). By placing reliance on Clause 1.8.1 (page-31,32), it is urged that as per Central Vigilance Commission recommendation, no disciplinary action can be initiated for any lapse not detected within two successive interval regular audit/inspection of the same account or four years from the date of the event whichever is later. He also relied on the judgment of the Supreme Court in the matter of M.V. Bijani v. Union of India and Others, (2006) 5 SCC 88 to buttress his contention that the supplementary charge-sheet needs to be set aside on the ground of delay itself.

5. Per contra, Shri A.C.Thakur, lerned counsel for the Bank supported the impugned order. He submits that the petition at this stage is not maintainable. He placed heavy reliance on the judgment of Supreme Court in the case of Union of India and another v. Kunnisetty Satyanarayana, AIR 2007 SC 906. and

Mahanagar Telephone Nigam Ltd. v. Chairman Central Board Direct Taxes and another, 2004(6) SCC 431. He also relied on the judgment of this Court passed in 21358/12 (Sanjeev Kumar Mishra v. State Bank of India & another). Lastly, by placing reliance on the recent order of Indore Bench dated 28.01.2016 passed in W.P.No.8859/15 (Alok v. Central Madhya Pradesh Gramin Bank and others), it is submitted that no interference be made in the impugned order. He, by placing reliance on the averments of the charge-sheet submits that at this stage judicial review on the charge-sheet is impermissible. He submits that allegations against the petitioner are very serious which will be inquired into in a duly constituted departmental inquiry.

6. No other point is pressed by learned counsel for the parties.

7. This is settled in law that charge-sheet can be interfered with at this stage on limited grounds. In the case of Union of India and Others v. Upendra Singh, (1994) 3 SCC 357, the Apex Court held that charge-sheet can be interfered with only when there is a patent lack of jurisdiction in issuing the charge-sheet. Correctness of the allegations cannot be gone into at this stage. The Court cannot take-over the functions of the disciplinary authority. Truth or otherwise of the charges is a matter for the disciplinary authority to go into. In the case of Transport Commissioner, Madras-5 v. A. Radha Krishna Moorthy, (1995) 1 SCC 332 the Apex Court has taken the same view. The Division Bench of this Court in the case of Jagdish Baheti v. High Court of M.P and others, 2015(2) MPHT 382 has considered various judgments of the Supreme Court and opined that ordinarily a writ petition is not maintainable against the charge-sheet. The charge-sheet cannot be quashed at initial stage on merits as it would be a premature stage to deal with the merits of the case.

8. No doubt, has held in State of Punjab (supra), interference in a charge-sheet can be made if allegations of malafide are established. In the present case, the petitioner has alleged malafide against respondent No.3 only on the ground that earlier he passed certain administrative orders against the petitioner.

9. The competence of respondent No.3 in issuing the earlier administrative orders and in issuing the charge-sheet is not called in question. In other words, it is not the case of the petitioner that respondent No.3 was not competent to issue the aforementioned administrative orders and the impugned charge-sheets. The earlier administrative orders passed by respondent No.3 were not called in question in any legal proceedings. The petitioner is unable to establish any thread relation with the earlier administrative orders and impugned charge-sheet. Mere allegations of malafide are not sufficient. In a case of this nature, the same has to be proved to the hilt. In the charge-sheet dated 15.5.2015, 42 charges are alleged against the petitioner. The charges pertain to procedural irregularity/dereliction of duty. The correctness of these charges cannot be gone into at this stage. The petitioner can very well take assistance of the audit report rectification/ clarification made by him in his defense in the said inquiry. This court cannot undertake the said exercise on merits.

10. As analysed above, petitioner is unable to show that the charge-sheets are outcome of any malicious act. Thus, on the ground of malafide, no interference can be made. The second limb of argument was relating to delay. The Apex Court considered the constitutional bench judgment of Abdul Rehman Antulay and Others v. R.S. Nayak and another, (1992) 1 SCC 225 in the case of State of Punjab and Others v. Chaman Lal Goyal, (1995) 2 SCC 570. The Apex Court opined that although the case of Antulay (supra) pertains to criminal prosecution, the principle enunciated therein are broadly applicable to the plea of delay in taking the disciplinary proceedings as well. The Apex Court held that in cases of delay ultimately the Court has to balance and weigh, several relevant factors-balancing test or balancing process-and determine in each case whether the right to speedy trial has been denied in a given case. It is observed that to quash the charge on the ground of delay is not the only course open to the court and in a given case, upon consideration and nature of offence and other circumstances, quashing of proceedings may not be in the interest of justice. In such a case, it is observed that it is open to the court to make such other appropriate order as it finds just and equitable in the circumstances of the case.

11. In the present case, the allegations against the petitioner are described in the supplementary charge-sheet. Considering the nature of the allegations, at this stage, I am not inclined to interfere on the charge-sheet. It will be open for the petitioner to take that all relevant objections in the inquiry. At appropriate stage, the enquiry officer and disciplinary authority shall deal with said objections of the petitioner. Apart from this, clause 1.8.1 on which reliance was placed by Shri Sharma, makes it clear that it is directory in nature. In the said executive instruction, it is mentioned that "ordinarily no disciplinary action will lie within two successive internal regular audit/ inspection of the same account or 4 years from the date of event, whichever is later" In the manner this provision is constructed, it shows it is directive in nature. It is further made clear that the aspect of time limit will not apply in cases of (I) Frauds, (II) Other Criminal Offences and (III) Cases where malafide are inferable. Thus, for these reasons, I am not inclined to interfere on the supplementary charges on the ground of delay. So far the judgment of M.V. Bijlani (supra) is concerned, in the said case, interference was made by the Apex Court after completion of inquiry and after imposition of punishment. Even the appeal of the petitioner therein was decided by the appellate authority. In that case various defects in the inquiry were notices by the Apex Court. It includes, delay at various levels which delayed initiation of inquiry, completion of inquiry and even delay in deciding the appeal. In the peculiar factual matrix of that case, interference was made on the ground of delay also. However, the said case cannot be made applicable in the present case wherein the allegations mentioned in the impugned charge-sheet relates to allegations of serious dereliction of duties. Applying the balancing test as laid down in Chaman Lal Goyal (supra), I am not inclined to interfere on the charge-sheet at this stage on the ground of delay.

12. In the case of Union of India and another v. Kunisetty Satyanarayana

(supra), it was held that the charge-sheet can be interfered with if it is wholly without jurisdiction or wholly illegal. The same view is taken by Indore Bench in Alok v. Central Madhya Pradesh (supra).

13. On the basis of aforesaid analysis, I am of the view that petitioner could not establish that he is subjected to disciplinary proceedings because of any malicious action on the part of respondent No.3. Similarly, on the ground of delay alone, at this stage, no interference can be made on the supplementary charge-sheet. It is made clear that this court has not expressed any opinion on merits of the case.

14. For the reasons stated above, interference is declined. Petition is dismissed.

