
(2012) 05 NCDRC CK 0020

In the National Consumer Disputes Redressal Commission

RAVINDER KUMAR

APPELLANT

Vs

STATE BANK OF PATIALA

RESPONDENT

Date of Decision : 22-05-2012

Acts Referred:

Citation : 2012 0 NCDRC 278 : 2012 3 CPJ 141

Hon'ble Judges : ASHOK BHAN , VINEETA RAI J.

Final Decision : petitions are disposed

Judgement

1. THESE two revision petitions (R.P.Nos.4327/2007 and 792/2008) have been filed by Ravinder Kumar (Petitioner herein) and State Bank of Patiala (Respondent herein) respectively against the single order of the State Consumer Disputes Redressal Commission, Delhi (hereinafter referred to as the "State Commission ") in Appeal No.A-2007/708 which has upheld the order of the District Forum. Since the parties and the facts are similar in both cases, we propose to dispose these of by a single order by taking the facts from R.P.No.4327/2007.

2. IN his complaint before the District Forum, Petitioner has contended that a departmental inquiry was held against him vide Charge-sheet No.AGM-I/STAFF/LRS/14044 dated 22.09.2000 on grounds of embezzlement of funds and the Assistant General Manager who was the disciplinary authority, had imposed a penalty of removal from service on him on 22.01.2001. According to the Petitioner, as per Clause 21(iv)(b) of the Bipartite Settlement dated 14.02.1995 which is relevant in such cases, Respondent was required to pay all superannuation benefits which included both his contribution to the Provident Fund as also that made by Respondent/Bank. However, Respondent/Bank did not release any of these benefits and in fact even debited Petitioner 's own contribution to the Provident Fund on the grounds that it was adjusted against the embezzled amount of Rs.1,62,300/-. Petitioner also contended that the Respondent/Bank had already made adjustments against the embezzled amount by recovering Rs.70,000/- from the Petitioner and Rs.52,300/- on account of

insurance claim. In addition, by adjusting Rs.62,414/- also from the Petitioner 's own contribution towards Provident Fund, Respondent had in fact recovered an excess amount of Rs.22,414/- which in any case should have been refunded to him along with all the other superannuation benefits. Since representations to this effect were not heeded by the Respondent/Bank, Petitioner filed a complaint before the District Forum on grounds of deficiency in service and requested that Respondent/Bank be directed to pay him the above amounts. The above facts were denied by the Respondents who contended that the Petitioner had himself admitted in writing vide his representation to the Assistant General Manager dated 11.10.2000, that he had embezzled the money and had requested for sympathetic consideration on humanitarian grounds and further requested that he was ready to make good the loss caused to the Respondent/Bank by his embezzlement by payment of Rs.70,000/- in cash as also adjusting his own contribution to Provident Fund or any other amounts which he had deposited with the Bank. Thus, the amount of Rs.70,000/- as well as Petitioner 's own contribution to Provident Fund was adjusted against the embezzled amount on the written request of the Petitioner. Respondent confirmed that the Assistant General Manager who was the disciplinary authority after going through the enquiry proceedings had imposed a penalty of removal from service and that the case of the Petitioner was to be dealt with in terms of Clause 21(iv)(b) of Bipartite Settlement dated 14.02.1995 read with the provisions of Sastri/Desai award.

3. THE District Forum after hearing both parties allowed the complaint by observing that as per the Bipartite Settlement dated 14.02.1995 which was quoted in the order of removal from service, the Respondent was required to pay "superannuation benefits " to the Petitioner, which was not done. On the other hand, from Petitioner 's own contribution of Rs.85,938/- towards Provident Fund, Rs.62,414/- was illegally adjusted by the Respondent in 2002. Therefore, the District Forum directed that the Respondents to jointly and severally pay the Petitioner, Rs.62,414/- within 60 days from the date of passing of the order. Petitioner, thereafter, filed a request before the District Forum for issuing a corrigendum on the grounds that District Forum had erroneously stated in its order that Rs.62,414/- was the amount to be paid to the Petitioner, whereas the actual amount payable was Rs.1,83,425/- including the Respondent/Bank 's contribution towards the Provident Fund of the Petitioner. It was also requested that the date of his removal was wrongly mentioned as 14.02.2005 and should be corrected to 22.01.2001. The District Forum issued a Corrigendum correcting the date of removal as 22.01.2001 but declined to consider the other request of the Petitioner.

4. AGGRIEVED by this order, both parties filed separate appeals before the State Commission. The State Commission dismissed the appeals through a common order by observing as follows: "Once there is a Bipartite Settlement between the parties, adjustments are to be made for the irregularities committed by the employee by way of written contract, which in this case was contract on

22.01.2001. Terms of the contract are strictly applicable and no other factor or circumstance can be used or applied by the Bank. Since in the instant case services were terminated under clause 21(iv)(b) by way of Bipartite Settlement, the Bank was not entitled to forfeit or withhold or adjust the contribution made by the employee to the Provident Fund. Had it been a case where the respondent had not made up the loss or the bank had not agreed to the amount paid by him, the appellant-bank would not have entered into a Bipartite Settlement and terminated the services under clause 21(iv)(b) which entitles the employee to all the benefits of superannuation, gratuity etc. "

Hence, the present revision petitions. Learned Counsel for both parties made oral submissions. Learned Counsel for Petitioner reiterated that Petitioner 's case has to be decided strictly in terms of Clause 21(iv)(b) of the Bipartite Settlement dated 14.02.1995 read with the provisions of the Sastri/Desai award. As per these provisions, an employee found guilty of gross misconduct may be compulsorily retired/removed from service/discharged, with superannuation benefits as would be due otherwise at that stage and without disqualification from future employment. Counsel for Petitioner contended that in the instant case, Respondent/Bank had violated the terms of the Bipartite Settlement by not releasing the Petitioner 's own contribution to the Provident Fund and instead adjusting it against the money purported to have been embezzled by him. Counsel for Petitioner further contended that Respondent was also withholding other superannuation benefits including the Bank 's contribution to Petitioner 's Provident Fund which was against the Bipartite Settlement and requested that these be released to the Petitioner since he has already been penalized for embezzlement by imposition of the harsh penalty of removal from service.

5. COUNSEL for Respondent on the other hand stated that Rs.62,414/- were deducted from Petitioner 's contribution to the Provident Fund as per Petitioner 's own request to do so in writing to be adjusted against the embezzled amount which was more than Rs.1,62,300/- as stated in the charge-sheet. Petitioner 's contention that Rs.1,83,425/- is still due to him is not acceptable since the embezzled amount is being worked out. There was no deficiency in service on Respondents ' part and in fact a lenient view of a serious charge was taken by the disciplinary authority by ordering only removal of service whereas in such cases dismissal is warranted.

6. WE have heard learned Counsel for both parties and have gone through the evidence on record. The fact that Petitioner was found guilty of embezzlement is not in dispute. It is also a fact that following an enquiry, as per the established procedure, Petitioner was found guilty of the said charge and the Disciplinary Authority vide order dated 22.01.2001 imposed a penalty of removal from service on the Petitioner. We further note that in the removal order it is clearly stated that his case would be governed in terms of Clause 21(iv)(b) of the Bipartite Settlement dated 14.02.1995 read with the provisions of the Sastri/Desai award. We have gone through the relevant provisions in this regard and we

note that in cases where an employee is removed from service, he will be inter alia entitled to superannuation benefits. In the instant case, we note that Rs.62,414/- being a part of the Petitioner 's contribution to the Provident Fund was withheld by the Respondents by adjusting this amount against the purportedly embezzled amount. Respondent 's contention that it adjusted Rs.62,414/- from Petitioner 's contribution of Provident Fund amount against the embezzled amount on the specific request of the Petitioner is not tenable in view of the provisions of Clause 21(iv)(b) of the Bipartite Settlement dated 14.02.1995 read with Sastri/Desai award. We therefore, uphold the order of the State Commission regarding release of Rs.62,414/- to the Petitioner. Petitioner has further contended that a sum of Rs.1,83,425/- being Respondent/Bank 's contribution to the Provident Fund has not been paid to him. No document or evidence has been produced by the Petitioner that this amount has been withheld by the Respondent/Bank and we therefore are unable to accept this claim. To sum-up, we uphold the order of the State Commission regarding payment of Rs.62,414/- to the Petitioner being his contribution to the Provident Fund. In case there is any other amount that is pending or which is to be recovered by the Respondent from the Petitioner against the embezzled amount, the Respondent is at liberty to work out its remedy to recover the same without violating the terms and conditions of Clause 21(iv)(b) of the Bipartite Settlement dated 14.02.1995 read with the Sastri/Desai award. The revision petitions are disposed of on the above terms.