
(2001) 07 J&K CK 0010
In the Jammu And Kashmir High Court
Case No : S.W.P. No. 1984 of 1998

Romesh Chander Sharma

APPELLANT

Vs

Chairman, J&K Spl.Tribunal, Jammu

RESPONDENT

Date of Decision : 13-07-2001

Acts Referred:

Jammu and Kashmir Co-operative Societies Act, 1989 — Section 63, 64

Citation : (2002) 4 SCT 533

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : C.M. Gupta, Rakesh Sharma, Advocates appearing for the Parties

Judgement

T.S. Doabia, J.—Petitioner Romesh Chander Sharma was performing the duties of CashiercumClerk in the Jammu Central Cooperative

Bank Ltd. He was dismissed from service on 25.9.1995. This was on the ground that a case of embezzlement of a sum of Rs. 53,520/ stood

proved against him. The respondentBank, it is stated, held an enquiry and it was only after the charges of embezzlement stood proved, the order of

dismissal was passed. It is further alleged by the respondentBank that the petitioner submitted number of representations to the Management of the

Bank. The plea taken by him was that a sympathetic view be taken. He be given a chance to serve the Bank. It is stated that the petitioner gave an

undertaking that he would join as a fresh entrant and this entry would be on compassionate grounds. It is stated that after he joined the

respondentBank, he preferred an application under Sections 63 and 64 of the J&K Cooperative Societies Act. In this his basic grievance was that

period of service during which he remained out on account of an enquiry having been completed and after he was dismissed from service and the

period during which he was submitting the representations should be taken note of. In a nutshell in the arbitration application he wanted to have

benefit of 14 years of service during which period he remained out of service. This petition preferred under Sections 63 and 64 of the J&K

Cooperative Societies Act was taken up by the Addl. Registrar, Cooperative Societies and an award was given against the respondentBank. The

respondentBank preferred a petition before the J&K Special Tribunal.

2. When the petition preferred by the Bank was pending before the J&K Special Tribunal, the respondentBank passed another order on

22.12.1997. This aspect of the matter was brought to the notice of the J&K Special Tribunal. The Tribunal was of the view that during the period

the matter was pending before the Tribunal, the respondentBank should not have again terminated the services of the petitioner. The

respondentBank was directed to consider this issue. This aspect of the matter was considered by the respondentBank. An order was passed on

27.7.1998. Petitioner was reinstated. At the same time it was observed that disciplinary proceedings could be taken by the Bank. Order dated

27.7.1998 (AnnexureK) is reproduced as under :

The Jammu Central Cooperative Bank Ltd.

No. Adm/950408

Dated 27.7.1998

ORDER

In compliance to order issued by the Hon'ble Chairman, J&K Special Tribunal, Jammu dated 17.7.1998 and 22.7.1998, the termination order of

Shri Romesh Chander Sharma, CashiercumClerk, issued under this office order No. Adm/1848488 dated 22.12.1997 is hereby rescinded with

immediate effect and he is posted back to Branch Ram Nagar as Cahsiercumclerk. He shall be entitled for the salary as was being drawn by him

prior to issuance of bank order as referred to above and shall draw the arrears accordingly w.e.f. 22.12.1997 till date.

However, disciplinary proceedings for indulging into the act of indiscipline in accordance with the rules shall be reinitiated against him separately in

compliance to the said order issued by the Chairman, J&K Special Tribunal, Jammu.

Entry to this effect shall be recorded in his service book.

Sd/

Managing Director

3. The matter was further taken up by the J&K Special Tribunal. The earlier issue with regard to dismissal on the ground of embezzlement and

later reinstatement was taken note of. The Tribunal was of the view that the petitioner was reinstated on compassionate grounds and therefore, the

decision of the Bank to treat the petitioner as a fresh entrant could not be taken exception to. What has been observed by the Tribunal in this

regard is being noticed below :

The plea of the Addl. Registrar in holding the Bank's order as harsh one seems to be based on some misconceptions. Shri Romesh Chander had

never been doubly punished as has been claimed by the Addl. Registrar. He was only removed from service after he had clearly admitted his guilt

regarding the theft of money. His reappointment at a lower pay scale is not another way of punishing the respondent as has been held by Additional

Registrar Cooperative, rather it is an act of mercy on the part of the J.C.C. Bank. I cannot agree with the Additional Registrar Cooperative that by

making a fresh appointment order the Bank has indirectly conceded that the penalty imposed by them is harsh. The Bank was absolutely within its

rights to remove him from service and they were also within their rights to show some mercy on him later on due to starvation in the family.

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4. Taking this view of the matter the Tribunal was of the view that the Additional Registrar Cooperatives took cognizance of the matter under

Sections 63 and 64 of the J&K Cooperative Societies Act. He was not right in his opinion in concluding that the petitioner was entitled to get the

intervening period of service of 14 years counted. It was accordingly held that the petitioner is to be treated as a fresh entrant. So far as the second

lapse is concerned, the Tribunal was of the view that this can be examined. The only observation which was made was that the Bank should hold a

fair enquiry in this matter. It is this order which is subjectmatter of challenge in this petition.

5. Some other facts be also noticed. The earlier order with regard to his termination when he was found to have embezzled a sum of Rs. 53,520/

was passed on 25.9.1995. The operative part of the order reads :

Therefore, keeping in view all the factors, Shri Romesh Chander Sharma, CashiercumClerk is hereby terminated from the service of the Bank as

CashiercumClerk with immediate effect.

6. The further fact is that the respondentBank considered the prayer of the petitioner for reindusction into service. An order dated 27.9.1997 was

passed. The operative portion of that order reads as under :

Whereas, the Competent Authority in all considerations and on account of humanitarian grounds felt that the ends of justice are enough met by

terminating the services of Shri Romesh Chander Sharma in case he is re employed in the Bank employment afresh as CashiercumClerk.

With these factors in view, Shri Romesh Chander Sharma S/o Shri Chajju Ram R/o Ward No. 11, House No. 123, Parliwand, Kathua is hereby

re appointed as CashiercumClerk in the sale of Rs. 89050990751290100169011020201202860 plus usual allowances as admissible under Bank

Rules subject to the condition that he will furnish a fresh surety bond on a nonjudicial stamped paper to the extent of Rs. 10,000/ and also deposit

the required cash security of Rs. 2000/ together with an affidavit that the termination order as also the reemployment order is acceptable to him in

totality. His posting orders shall be issued separately after the above formalities are completely by him.

7. Effect was given to this order by passing yet another order on 14.10.1995. It was this reinstatement which was subject matter of challenge in

terms of sections 63 and 64 of the Act. The award went in favour of the petitioner. This as indicated above was challenged before the J&K

Special Tribunal. The Tribunal was of the view that the order by which the petitioner stood re employed is to be read as it is. Petitioner cannot

claim benefit of the previous service.

8. Petitioner submits that he stood punished when order of termination was passed. Passing the second order another punishment has been

imposed upon him and that this could not be done.

9. I am of the opinion the arguments put across by the petitioner cannot be accepted. The departmental enquiry was held against him. It was found

established that the petitioner was guilty of having embezzled a sum of Rs.

53520/. His services were brought to an end. Thereafter his prayer for re induction in service was considered. He was ordered to be reinstated as a fresh entrant. The petitioner was supposed to furnish his security and also an undertaking that he accepts the factual position noticed in the order of termination. The petitioner furnished the requisite security bond and undertaking. If this be the position he is estopped from challenging the earlier order of termination in terms of reappointment. Therefore, the Additional Registrar Cooperative Societies, Jammu was not competent to set aside the order dated 25.9.1995 by which the services of the petitioner were brought to an end. The Special Tribunal rightly intervened in the matter and upheld the action of the respondentBank and rightly reversed the decision of the Additional Registrar Cooperative Societies, Jammu. There is yet an additional reason for sustaining the order of the Special Tribunal. When a contract of service is brought to an end then this action strictly speaking would not be covered by sections 63 and 64 of the J&K Cooperative Societies Act. The order by which the services of the petitioner were brought to an end is not a matter which falls within the definition of the contract dispute touching the business of the society. Thus, looking from any point of view the order passed by the Tribunal cannot be faulted. The respondentBank is now contemplating to take further action on the basis of fresh material and fresh lapses which have come on the record. Petitioner is at liberty to face the proceedings under law. This petition is as such, found to be without any merit and is dismissed.