

(2018) 08 RAJ CK 0258
In the Rajasthan High Court
Case No : Special Appeal Writ No.580 of 2017

Shri K.C. Verma @APPELLANT@Hash State Bank of India

Date of Decision : 28-08-2018

Acts Referred:

State Bank of India Officers Service Rules, 1992 — Rule 67

Citation : (2018) 08 RAJ CK 0258

Hon'ble Judges : Pradeep Nandrajog, CJ;G R Moolchandani, J

Bench : Division Bench

Advocate : R.N. Mathur, Ajay Choudhary, V.S. Yadav

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog,C J

1. Challenge in the appeal is to the judgment dated 14/02/2017 dismissing S.B. Civil Writ Petition No.3581/2012 filed by the appellant.
2. The appellant is an employee of the State Bank of India and the service is governed by the State Bank of India Officers Service Rules, 1992.
3. The appellant was promoted on 27/01/2004 in MMGSIII grade and was further promoted on the post of SMGS-IV grade on 26/03/2008.
4. In SMGS-IV grade, while working as Chief Manager of Deesa Branch of SBI, Ahmedabad he was served with a chargesheet for major penalty proceedings under the Rules of 1992 and the allegations in the charge-sheet was that he guided customers of the bank who were desirous of obtaining SBI Life Insurance Policy offered by the bank to his son who was working in the Met Life Insurance. This conduct was unbecoming of an officer and caused loss to the bank.
5. Appellant denied the charge. Enquiry officer was appointed. Enquiry report was submitted. Appellant was indicted. On 10/12/2010 the disciplinary

authority passed an order compulsorily retiring the appellant and as a result of the penalty imposed he became entitled to pension keeping in view the service rules. Appeal filed was rejected on 18/04/2011. Appellant filed a review petition for indulgence in view of unblemished past record. The

committee decided the review petition on 16/07/2011 recording that it was reducing the appellant to the Time-Scale of Pay in MMGS-III and that in

said scale he would draw salary at the minimum of the scale. The period post cessation of service on being compulsorily retired till reinstatement was

directed to be treated as dies-non. The order reads, as under:-

“Reduction to a lower grade of MMGS III, in terms of Rule 67(g) and fixing of his salary at the first stage of the time scale of MMGS-III in terms

of Rule No.67(f) of SBIORS. The order will be effective from the date he reports for duty. Further he will not be entitled for salary and allowances

on “dies-non” principle for the period he remained out of service and also this period will not be considered for seniority, superannuation or any

other benefits whatsoever. Terminal dues released to the official be recovered with interest at the time of reporting for duty.”

6. The appellant filed a writ petition in this Court he being indicted and the penalty imposed. Limited notice in the writ petition was issued on the

quantum of penalty imposed and thus by impugned decision learned Single Judge has decided the writ petition on the quantum of penalty levied.

7. To appreciate the rival version concerning the penalty levied, Rule 67 of the applicable rules needs to be noted. It reads as under:-

“PENALTIES:

67: Without prejudice of any other provisions contained in these rules, any one or more of the following penalties may be imposed on an officer, for an

act of misconduct or for any other good and sufficient reason to be recorded in writing (amended by Central Board, dated 21.06.2001).

MINOR PENALTIES:

(a) censure

(b) withholding of increments of pay with or without cumulative effect.

(c) withholding of promotion

(d) recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Bank by negligence or

breach of orders

(e) reduction to a lower stage in time-scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting the

officer's pension (vide CDO/PM/142/CIR/1 dated 13.04.2000 amendment to SBIOSRs-92, w.e.f. 31.03.2000, this has been made a minor

penalty. Before that date, it was a major penalty).

MAJOR PENALTIES:

(f) Save as provided for in (e) above, reduction to a lower stage in the time-scale of pay for a specified period with further directions as to whether or

not the officer will earn increments to pay during the period of such reduction and whether on the expiry of such period the reduction will or will not

have the effect of postponing the future increments of his pay;

(g) reduction to a lower grade or post;

(h) compulsory retirement##

(i) removal from service##

(j) dismissal##??

8. The contention of the appellant before the learned Single Judge was that vide clause (f) of Rule 67 a penalty of reduction to a lower stage in the

time-scale of pay for a specified period was leviable and vide clause (g), reduction to a lower grade or post was leviable. The contention was that the

penalty is in fact two major penalties for the reason the appellant was reduced to the lower grade, which would be a penalty under clause (d) and

further was reduced to lower stage in the time-scale of pay which would be a penalty under clause (f).

9. In the reply filed it was pleaded that the rule in question permits any one or more of the penalties to be imposed on an officer for a misconduct.

10. The learned Single Judge has held that since the rule permitted more than one penalty to be imposed, the order passed in review could not be

faulted with.

11. In appeal, reiterating the two submissions which were addressed before the learned Single Judge, a third has also been argued. The same is that

the period during which appellant remained out of service has been directed to be treated as 'dies non' for all purposes. Meaning thereby, this

period would not be counted as pensionable service rendered.

12. Now, if a penalty of reduction to a lower grade, in terms of clause (g) of Rule 67 is imposed, in the reduced post the employee would receive

salary but would not lose the increments which the employee had earned. Meaning thereby, for the number of years of service rendered in the higher

grade the same would be notionally treated as service in the reduced grade for purposes of fixation of salary. Where an employee is reduced to a

lower stage in the time-scale of pay, he would retain the post in the existing grade. The effect of the penalty levied upon the appellant is that he has

not only been reduced to the lower grade but additionally in the minimum of the scale of the lower post. Further, we find that if the penalty is to be

levied under clause (f) i.e. reduction to a lower stage in the time-scale of pay, the period of reduction has to be specified with further direction

whether or not the officer should earn increments at pay during the period of such reduction and whether on the expiry of such period the reduction

will or will not have the effect of postponing the future increments of pay. But the order passed in the review does not specify the period during which

the appellant would remain reduced to a lower stage in the time-scale of pay and the effect thereof is that the bank is treating the reduction in the

time-scale of pay to be permanent till the appellant superannuates.

13. Whilst it may be true that the rule empowers the competent authority to levy one or more of the penalties specified but that would not mean that

for a singular wrong more than one penalty can be levied. The rule has to be read with prudence. It happens more often that in a charge-sheet not a

singular but more than one charge is alleged against the delinquent employee and the rule contemplates that if an employee is indicted for more than

one charge, in said situation one or more penalty can be imposed.

14. Since the charge against the appellant was singular i.e. diverting business of the bank thereby committing the wrong of showing conduct

unbecoming of an officer and causing loss to the bank, we hold that only one penalty needs to be inflicted upon the appellant.

15. In respect of the third contention advanced in the appeal, that the period during which appellant remained out of service has been directed to be

treated as 'dies-non' for all purposes, since we are remanding the matter to the reviewing authority for re-consideration of the penalty to be

levied, we simply observe that at the remanded stage the reviewing authority

would specifically consider whether this period could be treated as in-service for purposes of pensionary service.

16. Thus, we dispose of the appeal quashing the penalty levied by the reviewing authority directing the reviewing authority to levy any one penalty which it feels proper to be levied upon the appellant. The present decision shall be kept in mind. Needful shall be done by the reviewing authority within one month on receipt of the present decision.