(2005) 01 AHC CK 0096

In the Allahabad High Court

Case No : C.M.W.P. No. 2701 of 2005

Shri Krishna Gupta — APPELLANT

Vs

Disciplinary Authority and Asstt. General Manager, Bank of Baroda and Others — RESPONDENT

Date of Decision : 20-01-2005

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2005) 2 AWC 1308 : (2005) 3 ESC 1648 : (2005) 105 FLR 82 : (2005) 2 LLJ 873 : (2005) 2 UPLBEC 1599

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : S.N. Dubey, for the Appellant; Saumitra Singh, for the Respondent

Final Decision : Dismissed

Judgement

Vineet Saran, J.—Heard Sri S.N. Dubey, learned counsel for the petitioner as well as Sri Saumitra Singh, learned counsel appearing on behalf of Respondent-Bank and have perused the record.

2. The petitioner is a Cashier in the Respondent-Bank of Baroda. On four occasions in the year 2002, when he was posted in Surya Nagar Branch at Ghaziabad, the petitioner was advised/warned by the Branch Manager regarding his working. However, since such incidents were happening repeatedly, on 23.12.2002, the petitioner was placed under suspension. Thereafter he was reinstated in service on 4.12.2003. Then on 13.3.2004 a charge-sheet was issued by the Assistant General Manager (as disciplinary authority) to the petitioner giving details of the four charges. An enquiry by the Branch Manager, KCM School Branch, Moradabad was to be conducted into the charges levelled against the petitioner. Through the Employees'' Union, the petitioner made a representation to the Assistant General Manager on 26.6.2004 that since the petitioner had been issued warnings by the Branch Manager who, according to the petitioner, was the disciplinary authority, such warnings ought to be treated

as final orders and fresh enquiry in regard to such charges could not be made. As no order had been passed on the said representation of the petitioner through the Employees'' Union, the petitioner filed Writ Petition No. 35815 of 2004 which was disposed of by this Court on 2.9.2004 with a direction that the application of the petitioner dated 26.6.2004 (which was actually by the Employees'' Union) be decided by a speaking order, in accordance with law, within four weeks and for a period of six weeks the enquiry proceedings had been stayed. By an order dated 7.12.2004, the representation dated 26.6.2004 has been disposed of wherein it has been held that the earlier warnings issued to the petitioner for his conduct regarding four instances were merely advisory letters issued to him and such advice could not be termed as final decision of the disciplinary authority.

3. The petitioner has thus filed this writ petition challenging the order dated 7.12.2004 as well as the charge-sheet dated 13.3.2004.

4. Admittedly the letters of warning/advice had been issued by the Branch Manager immediately on the same day of the happenings. On being asked, the learned counsel for the petitioner has accepted that no notice or chance for explanation had been given by the said authority to the petitioner before issuance of such letters. In such view of the matter, the letters issued by the Branch Manager on the same day of such happenings could only be advisory in nature issued in normal course of office management and could not be termed as final decision of the disciplinary authority as no final orders of punishment could be passed without giving any opportunity of hearing to the petitioner. Thus, the impugned order dated 7.12.2004, in so far as it holds that the letter of the Branch Manager were only advisory letters, cannot be said to be illegal or wrong.

5. For proper appreciation of this case, the four charges levelled against the petitioner are quoted below :

"1. On 29.4.2002 you were working as receipt cashier, Mr. Kailash K. Atolia, holder of SB A/c No. 11960 tendered cash of Rs. 1,00,000 to you for deposit in his account. You returned him Rs. 90,000 stating that his cash is short. Party told you that he had brought Rs. 1,00,000 and his packets affixed Bank of India slips. On the verbal complaint of Mr. Kailash K. Atolia, customer, Mr. A. K. Grover, Jt. Manager of the branch immediately rushed to your cabin and scrutinized your cash and found one Rs. 100 denomination packet in your possession. The Bank of India slip affixed on the packet matches with other packets of the Party. You then, immediately, received their cash and issued them receipt. No shortage/ excess was reported by you at the end of the day thereby further proving that SB A/c. holder tendered to you Rs. 1,00,000. Thus, on 29.4.2002, you tried to pocket and misappropriate Rs. 10,000 from the cash tendered by Mr. Kailash K. Atolia holder of SB A/c. No. 11960.

2. On 31.5.2002, you misbehaved with Actg. Head Cashier, Km. Shashi Saxena. Your above act resulted in hampering of Bank''s work and tarnished the image of the Bank.

3. On 4.6.2002, Rs. 2,000 were found exeess in you cash till. Thus, you were negligent in performing your duties as cash found in excess with you is due to excess receipt from the customer or short payment to the customer of the Bank.

4. There are repeated instances of cash found in excess with you at cashier seat, for which you were advised by the branch on 30.12.2002 to be more careful in future in discharging your duties as cashier."

6. On a perusal of the said charges it would be clear that the same are of serious nature on which at least an enquiry would be required to be conducted. The petitioner, despite being warned/advised, continued to commit mistakes again and again. No case is made out for quashing the enquiry proceedings. Besides observing that the charges levelled are of serious nature, nothing more is being said about the same, lest it may influence the enquiry.

7. The other contention of the petitioner, that the Assistant General Manager, who has issued the charge-sheet, could not be the disciplinary authority, also does not have any force in view of the fact that the same has not been substantiated by the petitioner by any document except for merely relying upon a Circular which had been issued in the year 1993. The petitioner has not placed before me the relevant Rules governing his service with regard to disciplinary proceedings and appeal. In the absence of the said Rules having been placed on record, no reliance can be placed on a mere Circular issued more than a decade back.

8. For a writ to be issued by this Court in its extra-ordinary equity jurisdiction under Article 226 of the Constitution of India, it is necessary for the person approaching the Court to show that the order passed is not only illegal but equity is also in his favour. In the present case, neither has the petitioner been able to show any illegality in the impugned orders nor is equity in his favour as the charges against him are of serious nature. Accordingly, I find no good ground for interference with the impugned orders dated 13.3.2004 and 7.12.2004.

9. This writ petition is, thus, dismissed. No order as to cost.

