

(2011) 11 DEL CK 0484

In the Delhi High Court

Case No : Writ Petition (C) No. 3465 of 1998

Sita Ram Aggarwal

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 01-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Punjab National Bank Officer Employees Conduct Regulations, 1977 — Regulation 3, 13

Citation : (2011) 11 DEL CK 0484

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : Aprub Lal with Ms. Kumari Alka, for the Appellant; Jagat Arora with Mr. Rajat Arora, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Mehta, J.—This writ petition under Article 226 of the Constitution of India has been preferred by the petitioner for issuance of a writ of Certiorari for quashing the order dated 31.1.1995 passed by the Deputy General Manager Disciplinary Authority under which the petitioner has been retired compulsorily from the service of Punjab National Bank (PNB). The petitioner was appointed as Civil Engineer by respondent bank on 12.4.1993 and was initially posted to supervise the construction work of the bank at Bhikaji Cama Palace, New Delhi. Since his work was not satisfactory, he was not selected for the promotion in the interview held in April, 1988. He was issued a charge-sheet on 7.7.1988 on the allegations that he failed to take possible steps to ensure and protect the interest of the bank and did not discharge his duties with utmost devotion and diligence and thus committed misconduct in terms of Regulation 3(i) of Punjab National Bank Officers and Employees (Conduct and Regulations), 1977 (hereinafter referred to as "Regulations"). He submitted a show cause notice to the charge-sheet and also Memorandum and letter dated 25.10.1988 and finally preferred an appeal before the Chairman-cum-Managing Director which was turned down. Since, interviews were held again in January-February, 1990 for promotion, and

he was not called for the same, he filed a writ petition wherein an order was passed that any promotion made would be subject to the final decision of the writ petition. However, subject to the final decision of the writ petition, he was promoted with effect from 19.7.1993. The petitioner has narrated all these facts to allege malafide of the officers of the bank in the subsequent charge-sheet of misconduct which was slapped upon him while he was posted at Bhopal. On 14.9.1993, he along with Mr. Yusuf Zia, an officer of the regional bank at Bhopal, visited later's residence. The allegations against him were that he again visited the residence of Mr. Yusuf Zia on 16.9.1993 at about 1.30 pm when his mother Mst. Mehfuza Begum was alone and he tried to molest her. He was served with a show-cause notice on 18.9.1993 to explain his visit to the residence of Mr. Yusuf Zia and about his misconduct with his mother. In his explanation, he denied about his visit on 16.9.1993 and stated that he had visited the residence of Mr. Yusuf Zia on 14.9.1993 after several requests by him. He also explained that as per advice of the doctor, he was on bed rest for 16.9.2003. Since the petitioner did not attend office after 16.9.1993, he was also charge-sheeted of misconduct for having left the office without obtaining the prior permission of the competent authority and for absenting himself from duties unauthorizedly.

2. The petitioner has been served with the charge-sheet with the undermentioned charges:

Charge-I

He acted in a highly indecent and immoral manner prejudicial to the interest of the Bank.

1. On 14.9.93, at about 7 pm, Shri Agarwal visited the residence of one Shri Yusuf Zia, Officer in JMG Scale-I, posted at Regional Office, Bhopal at 2/7, MIG Ankur Complex, Bhopal. Shri S.R. Agarwal was introduced to Smt. Mehfuja Begum, mother of Shri Yusuf Zia, as a senior officer of the bank.

On 16.9.93, Shri Agarwal taking undue advantage of the introduction and knowing fully well that Smt. Mehfuja Begum would be alone at home, went to the residence of Shri Zia at about 1.30 pm with the immoral intention of outraging her modesty. Shri Agarwal rang the Calling Bell of the flat and gained entry. On being enquired by Smt. Begum about the purpose of Shri Agarwal's visit at that hour, Shri Agarwal said that he had come to meet her only. Immediately thereafter, he made obscene gesture/ posture with the intention to outrage the modesty of Smt. Mehfuja Begum.

As soon as Smt. Mehfuja realized the malafide intention of the visit of Shri Agarwal, she managed to run out of flat to call the neighbour for help. When Shri Agarwal found that Smt. Mehfuja Begum had gone out of the house and was seeking help of the neighbour, he rushed out of the house and escaped.

Taking undue benefit of this position as Senior Manager of the Bank, Shri Agarwal indulged in activities quite prejudicial to the interest of the Bank as it

lowered the image of the bank in the eyes of the public at large.

CHARGE-II

He left Headquarters without obtaining prior permission of the competent authority and absented from duties unauthorizedly.

1. On 18.9.1993 (Saturday) at about 4 pm Shri Agarwal submitted Leave application for availing privilege leave w.e.f. 20.9.1993 to 25.9.1993 for going to Delhi stating reasons for leave as "personal works at Delhi". It was advised to Shri Agarwal verbally that his request for leave as above was not acceded to by the Competent Authority and as such, he should not proceed on leave.

Despite the above verbal instructions, Shri Agarwal left Headquarters and proceeded on leave without obtaining prior approval/ concurrence of the Competent Authority, thereby violating the instructions of the Higher Authorities.

2. Shri Agarwal absented from duties w.e.f. 20.9.93 and did not report for duties though he was advised about non-sanction of his privilege leave applied by him as stated under para (1) above. Vide Zonal Office, Bhopal telegram dated 21.9.93, Shri Agarwal was advised about non-sanction of leave as well as for resuming the duties immediately. Shri Agarwal, however, neither reported for duties nor he submitted any reply to the said telegram/ confirmatory copy of telegram and remained absent unauthorizedly.

3. Again, Shri Agarwal was advised to resume his duties along with explanation for his unauthorized absence from duties w.e.f. 20.9.93 vide Zonal Office, Bhopal telegram dated 13.10.93. He neither reported for his duties nor he submitted any explanation / reply for his unauthorized absence from duties and has been continuing to remain absent from duties without any valid reasons.

3. The petitioner replied the above charges on 27.1.1994. With regard to the charge no.1, he admitted that he did visit Zia's house on 14.9.1993, but stated the same to be at later's instance. He, however, denied his visit on 16.9.1993 or any other day. With regard to charge no.2, he stated that on 18.9.1993 at about 11 am, an erratic group of employees of the Bank obstructed him to proceed for his work and they also started behaving with him in an abhorrent manner. He then approached the Deputy Zonal Manager who suggested him not to go to worksite and also advised him to proceed on leave and accordingly he made an application on 18.9.1993 for proceeding on leave from 20.9.1993 to 25.9.1993. He stated that he proceeded on leave after obtaining verbal consent of Deputy Zonal Manager and denied that he proceeded on leave without consent or knowledge of the higher authorities. He stated that on 25.9.1993, he being unwell, applied for extending leave on medical grounds and also sent a phonogram on 4.10.1993 informing about his sickness. He stated having sent as many as 8 phonograms starting from 16.10.1993 to 21.01.1994 and 6 letters starting from 8.11.93 to 7.1.94 seeking grant of leave. On this premise, he denied that he was unauthorizedly absent from duty.

4. Not satisfied with the reply, the respondent instituted a departmental inquiry which ultimately came to be conducted by the Inquiry Officer from 23.3.1994 to 27.6.1994. The Inquiry Officer conducted the inquiry as per rules and there is no challenge with regard to the manner of conducting inquiry by him. Even after conclusion of inquiry proceedings on 27.6.1994, the petitioner was granted another opportunity to submit his brief in writing which he did vide letter dated 7.7.1994. The Disciplinary Authority ultimately vide its order dated 31.1.1995 decided to impose upon him major penalty of compulsory retirement from bank services. Now, the petitioner started leveling allegations against the Disciplinary Authority vide repeated letters which were turned down by the department/competent authority. The petitioner then represented to Senior Regional Manager on 29.8.1995 for placing before Appellate Tribunal his representation protesting appointment of Disciplinary Authority. Then he sent other letter as follow-up on 7.10.1995. He was again informed about the decision of the Board according approval of Disciplinary Authority and that the same has also been communicated to him. He was also informed that the appeal could have been preferred within 45 days under Regulation No.17 and the period now already stood expired. The petitioner kept on writing letter after letter to the different authorities of the Bank and he also wrote another letter to the Executive Director of the respondent bank denying the allegations of misconduct and also levelled allegations of misconduct against the Disciplinary Authority. On these averments, the petitioner has challenged his compulsory retirement from service vide impugned order dated 31.1.1995 of Disciplinary Authority.

5. From the averments as noted above and the submissions made by learned counsel for the petitioner, it would be noted that the main grievance of the petitioner was about the aforesaid charges leveled against him and whereupon the inquiry came to be conducted and consequently he was compulsorily retired from his service.

6. In dealing with this controversy, it is necessary at the outset to emphasize the limitation and jurisdiction of this Court in entertaining a plea of writ of certiorari under Article 226 of the Constitution of India. This question has been the subject matter of several decisions of the Supreme Court as well as this Court and the law in this regard is no longer in doubt. In order to justify the issue of writ of certiorari, it must be shown that the impugned order suffers from an error apparent on the face of the record.

7. Now advertent to the facts of the present case leading to the conduct of the inquiry resulting in compulsory retirement of the petitioner, it is noted that there are two charges of misconduct leveled against him. It has been noted above that a due inquiry was conducted after giving opportunity of being heard to the petitioner by the Inquiry Officer. In the inquiry proceedings, the petitioner was also given opportunity to cross examine the department witnesses and lead his own evidence. With regard to the charge (1) of misconduct it was not only the complainant, who was none else but the mother of junior colleague of the

petitioner, but three independent witnesses were also examined by the department. From the inquiry report, it is seen that the complainant maintained about the indecent behavior of the petitioner. The petitioner had admitted having visited the residence of the Yusuf Zia on 14.9.1993 and the presence of mother of Yusuf Zia there. Yusuf Zia was admittedly his junior and no explanation has been given by the petitioner about the purpose of his visit to the house of Mr. Zia on 14.9.1993. Though petitioner had denied having visited residence of Yusuf Zia on 16.9.1993 and behaving indecently with his mother Mehfuza Begum, but all this stood proved in the statements of Begum Zia and two independently corroborating witnesses. There was no reason why Begum Zia or the two independent witnesses would depose against him. The petitioner had also admitted that on 18.9.1993 he was assaulted by the staff of the bank. The reasons for such an assault was none else but the indecent behavior of the petitioner with Begum Zia.

8. I do not see any perversity or illegality in the inquiry conducted by the Inquiry Officer. However, the question for consideration would be as to whether indulgence in such an activity by the petitioner would amount to misconduct or not. The respondent bank in its "Officer Employees" Regulations (hereinafter the "the Regulations") has prescribed various activities of the employees amounting to misconduct and notified different kinds of punishments. Sub Clause (2) of Rule 3 which prescribed general regulations for conduct of the employees reads as under:

(2) Every officer employees shall maintain good conduct and discipline and show courtesy and attention to all persons in all transactions and negotiations.

9. Learned counsel for the petitioner submitted that the alleged activities of the petitioner in any case would not amount to misconduct inasmuch as it has no connection whatsoever with the official working of the petitioner. In this regard, reliance is placed on Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others, . It is submitted by learned counsel for the petitioner that the employer has hardly any extraterritorial jurisdiction. He is not the custodian of general law and order situation nor the Guru or mentor of his workmen for their well regulated cultural advancement. The Supreme Court in above case observed as under:

If the power to regulate the behaviour of the workmen outside the duty hours and at any place wherever they may be was conferred upon the employer, contract of service may be reduced to contract of slavery. The employer is entitled to prescribe conditions of service more or less specifying the acts of misconduct to be enforced within the premises where the workmen gather together for rendering service. The employer has both power and jurisdiction to regulate the behaviour of workmen within the premises of the establishment, or for peacefully carrying the industrial activity in the vicinity of the establishment.

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Where the Standing Orders of an establishment provide that certain acts would constitute misconduct if "committed within premises of the establishment or in the vicinity thereof" then any misconduct committed anywhere irrespective of the time-place content where and when it is committed anywhere irrespective of the time-place content where and when it is committed cannot be comprehended to be the misconduct within the meaning of the Standing Orders merely because it has some remote impact on the peaceful atmosphere in establishment. The words "committed within premises of the establishment or in the vicinity thereof" are words of limitation and they must cut down the operation of the Standing Order. The misconduct prescribed in a standing Order which would attract a penalty has casual connection with the place of work as well as the time at which it is committed which would ordinarily be within the establishment and during duty hour. The casual connection in order to provide linkage between the alleged act of misconduct and employment must be real and substantial, immediate and proximate and not remote or tenuous.

Some misconduct neither defined nor enumerated and which may be believed by the employer to be misconduct ex post facto would not expose the workman to a penalty. It cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant Standing Order is nonetheless a misconduct not strictly falling within the enumerated misconduct in the relevant Standing Order but yet a misconduct for the purpose of imposing a penalty.

10. There does not arise any dispute with regard to the standing orders of establishment which specifically mandates certain acts to constitute misconduct and that it could not be left to the management to say ex post facto, the same acts of omissions and commissions would nonetheless amount to misconduct even if they are not included in the standing order. As per Regulation 3 which prescribes general conduct for the employees every employee was required to maintain good conduct and discipline and show courtesy and attention to all persons and in all transactions. In fact it is difficult to lay down any general rule as to what conduct can be properly termed as misconduct. In this regard reference is made to the case of the Supreme Court in *Agnani (W.M) v Badri Das and others* [Civil Appeal No.881 of 1962, dated 25th March, 1963] wherein it was held as under:

Acts which are subversive of discipline amongst the employees would constitute misconduct; rowdy conduct in the course of working hours would constitute misconduct; misbehavior committed even outside working hours but within the precincts of the concern and directed towards the employees of the said concern may, in some cases, constitute misconduct; if the conduct proved against the employees is of such a character that he would not be regarded as worthy of employment, it may, in certain circumstances, be liable to be called misconduct. What is misconduct will naturally depend upon the circumstances of each case. It may, however, be relevant to observe that it would be imprudent and

unreasonable on the part of the employer to attempt to improve the moral or ethical tone of his employees" conduct in relation to strangers not employed in his concern by the use of the coercive process of disciplinary jurisdiction. As we have already observed, it is not possible and we do not propose to lay down any general rule in that behalf. Where standing orders were framed, there is no difficulty because they define misconduct. In the absence of standing orders, the question will have to be dealt with reasonably and in accordance with commonsense.

11. In the present case, the misconduct that is proved against the petitioner has been noted above. There cannot be any dispute that bank employees have direct link with the general public at large and if they are not disciplined, it would have the effect of subverting the good image of the establishment. Any indecent behavior or activity of the bank employees are bound to have negative impact on the working of the establishment. This is irrespective of the fact that the act was committed within the premises or outside. It is the duty of the officials of the establishment of the bank to take all possible steps to protect the interest of the bank and to ensure that the duties are discharged by its employees. Not only that, they must have integrity, honesty and devotion, and must act in a decent and orderly manner. It is unbecoming of a bank officer to indulge in any kind of activity which has the effect of subverting the discipline and good behavior of the establishment. In view of the nature of the activities in which the petitioner indulged and which stood proved through proper inquiry, the contention of learned counsel for the petitioner was untenable that the respondent was not supposed to act as a mentor or its work was not to regulate their conduct and behavior Judging by any kind of standard, the activity and behavior of the petitioner towards Mrs. Begum Zia when she was alone at her home would amount to misconduct within the ambit of Clause 2 of Regulation 3.

12. With regard to the charge relating to his being absent from duties unauthorizedly, the case of the petitioner was that he was assaulted by the staff on 18.9.1993 and then was advised by Zonal Manger to proceed on leave and he did so after submitting the application for leave from 20.9.1993 to 25.9.1993. In the inquiry proceedings, the bank official Mr. D.K. Sharma was examined as PW5 and he was subjected to lengthy cross examination by the petitioner. From his submissions, it came to be concluded by the Inquiry Officer that the petitioner did apply for leave with effect from 20.9.1993 to 25.9.1993 vide his leave application dated 18.9.1993, but the same was not accorded sanction and the decision of the Competent Authority was communicated to him with clear and mandatory instructions not to proceed on leave. This witness clearly stated that the leave applied by the petitioner had not been sanctioned. This clearly goes to prove the second charge against the petitioner. Based upon the testimony of the witnesses and the documentary evidence led by both the parties, the Inquiry Officer arrived at a conclusion that the petitioner was advised adequately and timely of non-sanction of his leave and about his unauthorized absence. Not only this, the petitioner continued sending applications and phonograms for extension

of his leave on medical grounds. From the evidence of the parties and also the documents, the Inquiry Officer also arrived at a finding of fact that the petitioner was categorically advised to submit the explanation as well as medical certificate in original from Chief Medical Officer of Government Hospital or from Bank Chief Medical Officer posted at New Delhi. Based on material on record, the Inquiry Officer also came to conclusion that the petitioner acted in violation of instructions and remained absent from his official duties from 20.9.1993 onwards and also did not give any explanatory letters/ documents in support of his contentions.

13. Rule 13 of the Regulations which was stated to be violated by the petitioner reads as under:

13. Absence From Duty:

(i) No officer employee shall absent himself from his duty or be late in attending office or leave the station without having first obtained the permission of the competent authority.

(ii) Provided that in the case of unavoidable circumstances where availing of prior permission is not possible or is difficult, such permission may be obtained later subject to the satisfaction of the competent authority that such a permission could not have been obtained.

(iii) No officer employee shall ordinarily absent himself in case of sickness or accident without submitting a proper medical certificate.

Provided that in the case of temporary indisposition or sickness of a casual nature, the production of a medical certificate may, at the absolute discretion of the competent authority, be dispensed with.

14. From the petitioner's own saying, it would be seen that he was assaulted on 18.9.1993 and he proceeded on leave and left for Delhi. Thereafter, he kept sending letters/ phonograms for extension of leave on medical grounds. That was the charge against him and the same was proved adequately in the inquiry. This would apparently be seen that the absence from duty was in clear violation of Rule 13 of the Regulations.

15. In view of above discussion, it is seen that the inquiry was properly conducted by the Inquiry Officer and nothing illegal or ultra vires could be pointed out by the petitioner. The fact that he had some grudge or grievance against the Disciplinary Authority as regards to his working, it was all extraneous and irrelevant since it all pertains to the period which was much prior to the alleged acts of misconduct. I am unable to see any illegality or irregularity in the inquiry conducted by the Inquiry Officer. Though, I am not sitting in appeal, but I have examined the proceedings/ inquiry and also findings of the Inquiry Officer and I do not see any impropriety therein. Further, keeping in view the entire misconduct which stood proved against the petitioner, I do not see that the punishment awarded was disproportionate as regards to his misconduct. There

was nothing on record to suggest that the petitioner was in any way victimized.

16. In view of my above discussion, I do not find any reason to interfere in the impugned order dated 31.01.1995 of the Disciplinary Authority. The petition is hereby dismissed. Having regard to the facts and circumstances of the present case, there shall be no orders as to costs.