
(2004) 11 DEL CK 0025
In the Delhi High Court
Case No : Writ Petition (C) . 8975 of 2003

S.M. Gupta

APPELLANT

Vs

Oriental Bank of Commerce and Others

RESPONDENT

Date of Decision : 08-11-2004

Acts Referred:

Oriental Bank of Commerce Officer Employees (Discipline and Appeal) Regulations, 1982 — Regulation 12(4)

Citation : (2004) 115 DLT 257 : (2003) 96 FLR 1121 : (2005) 1 LLJ 1063

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Bharat Bhushan, Harish Sharma and B.K.Saini, for the Appellant; Rajat Arora, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Sarin, J.—Petitioner by this writ petition seeks a writ of mandamus directing the respondent bank to release and pay, subsistence allowance for the period from 25.5.1995 to 9.12.2002. Petitioner pursuant to a departmental enquiry had been dismissed from service, vide order dated 25.5.1995. The said order of dismissal was set aside on 10.12.2002. Hence the claim for subsistence allowance for the period from 25.5.1995 to 9.12.2002. Petitioner additionally seeks release of part of the subsistence allowance for the earlier period from 1.11.1992 to 25.5.1995 which has been retained by the bank under lien for the alleged frauds perpetuated by the petitioner, as set out in letter dated 18.3.1997, Annexure P-10. Petitioner also seeks a direction for reimbursement of medical expenses.

2. Petitioner who had joined service with respondent bank as a Clerk, advanced in career and reached the position of Manager. He was posted at Branch office at Gurgaon.

3. A complaint was filed by respondent bank alleging misappropriation of its funds. Petitioner is being prosecuted for the same and a criminal trial is stated to

be pending.

4. Petitioner was also proceeded against departmentally. Petitioner had filed writ petition bearing C.W. No. 3712/1996 challenging the dismissal of the petitioner vide order dated 25.5.1995. The ground urged by the petitioner was that he had not been given adequate opportunity to put forward his case, thereby principles of natural justice were violated. The learned Single Judge found merit in the said petition. He held that the petitioner's request for time to be granted, could not have been considered as statement of defense, which has resulted in manifest injustice to the petitioner. Operative part of the order of the learned Single Judge dated 10.12.2002 may be reproduced for facility of reference:-

"Accordingly, I allow writ petition, make the rule absolute. Petitioner shall be deemed to be in continued service with all consequential benefits. However, it will be open for the respondent if they so decide to continue the inquiry from the stage when it was left after giving an opportunity to the petitioner to file a statement of defense. The question of back wages may also be decided after the inquiry report is received by the respondent. However, a direction is issued that if the management wants to go for departmental inquiry, the same shall be concluded within a period of six months from today. Petitioner is directed to co-operate with the inquiry proceedings. Ordered accordingly.

Petition stands disposed of."

5. The respondent bank after the above order had been passed, issued a communication dated 25.1.2003 informing the petitioner that it had been decided to hold an enquiry into the charge sheet dated 29.7.1994 and the petitioner was asked to submit his statement of defense. Vide order dated 17.2.2004, petitioner was dismissed from service with the stipulation that the same shall ordinarily be a disqualification for future employment.

6. The question arising for consideration in this writ petition is claim of the petitioner for being paid the subsistence allowance under the rules for the period from 25.5.1995 to 10.12.2002, when the learned Single Judge set aside the original order of dismissal.

7. Counsel for the petitioner has placed reliance on the Oriental Bank of Commerce Officer Employees (Discipline and Appeal) Regulation, 1982. Reference is invited to Regulation 12(4) dealing with suspension, which is reproduced as under:-

"(4)Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an officer employee under suspension is set aside or declared or rendered void in consequence of or by a decision of a court of law, and the disciplinary authority, on consideration of the circumstances of the case, decided to hold further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the officer employee shall be deemed to have been placed under suspension by the

competent authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders."

8. Petitioner's case is that respondents had decided to hold a further enquiry as communicated by letter dated 25.1.2003, after the dismissal order had been set aside on 10.12.2002. The consequence of this would be that the deeming provision under Regulation 12(4) would come in operation resulting in petitioner's case to be treated as deemed suspension from the original date of dismissal, which is 25.5.1995. Learned counsel for the petitioner relies in support on the decision of Supreme Court in the case of S.P. Viswanathan (II) Vs . Union of India and Ors. . In the said case, validity of a similar provision as that of Regulation 12(4), under the Railway Servants (Discipline and Appeal) Rules,1968 was upheld. The Court repealed the challenge to the same relying on its earlier decision in Khem Chand Vs. Union of India reported at 1963 Supp (1) SCC 229. The Court held that there was no illegality in treating the petitioner under deemed suspension on his reinstatement pursuant to the order of the Tribunal.

9. Learned counsel for the respondent opposes the petition submitting that the enquiry was being done pursuant to the liberty granted by the learned Single Judge and as such the subsistence allowance was liable to be paid only from the date the petitioner was suspended again. The above argument ignores the deeming provision in Regulation 12(4) of the Oriental Bank of Commerce Officer Employees (Discipline and Appeal) Regulation,1982. He submits that the consequence even otherwise is inequitable as the person would receive subsistence allowance of about 50% of the wages without carrying out any work. This plea of respondents is untenable. Petitioner is, Therefore, held entitled to the payment of subsistence allowance for the period from 25.5.1995 till 9.12.2002 in terms of Regulation 12(4) of the Oriental Bank of Commerce Officer Employees (DandA) Regulations,1982. Respondents shall pay the same within one month from the date of this judgment.

10. Learned counsel for the petitioner submits that during this period of deemed suspension, petitioner is also entitled to reimbursement of medical expenses. Counsel for the petitioner presently is unable to support this contention from any of the rules for medical reimbursement. He submits that the petitioner would make a representation citing the relevant rules which entitle him to medical reimbursement during the period of suspension. Let the representation be made within two weeks. Respondent would examine the same and pass a speaking order thereon.

11. Lastly counsel for the petitioner prayed that the respondents could not have retained any lien on the subsistence allowance which was payable to the petitioner for the period from 25.5.1995 to 9.12.2002 on account of alleged misappropriation of funds.

Respondents could have at best withheld the arrears of salary and retained a lien

thereon, but they cannot claim a lien on the subsistence allowance which is payable for the very survival of the person.

12. Learned counsel for the respondent in response submits that the respondent would withhold only the arrears of salary. As far as subsistence allowance is concerned the amount due during the period, if withheld on this account, would be released. Let the same be done within a month.

Writ petition stands allowed in the above terms.