
(2014) 11 MAN CK 0010
In the Manipur High Court
Case No : Writ Petition (Civil) No. 209 of 2012

Thoiba Kabui Phaomei

APPELLANT

Vs

The Punjab National Bank

RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

Citation : (2015) 4 GLT 92

Hon'ble Judges : Laxmi Kanta Mohapatra, C.J;N. Kotiswar Singh, J

Bench : Division Bench

Advocate : R.K. Nokulsana, Sr. Advocate and Y. Sanajaoba, Advocate for the Appellant; A. Deni Sharma, Advocate for the Respondent

Judgement

N. Kotiswar Singh, J.—The present writ petition has been filed by the petitioner challenging the order dated 16.5.2011 by which the petitioner was imposed the penalty of compulsory retirement with superannuation benefits and without disqualifying from future employment in terms of Clause 6(c) of the Bipartite Settlement dated 10.4.2002 and also the order dated 18.2.2012 passed by the appellate authority rejecting the appeal preferred by the petitioner and confirming the penalty imposed by the disciplinary authority.

2. The petitioner joined service as clerk-cum-cashier in the Punjab National Bank in the year 1981 and thereafter was promoted as Special Assistant in the year 2001. While serving as an Special Assistant at the branch office of the bank at Imphal, the petitioner was proceeded against in a departmental enquiry and was charged on 3 (three) counts constituting as acts of gross misconduct in terms of Clause 5(j) of the Bipartite settlement dated 10.04.2002 as contained in the charge sheet dated 18.11.2008. The said 3 (three) charges are as follows:

"Charge No. 1

You, as in charge of cash in the absence of 2nd man on different dates you did not ensure proper checking of closing cash balances and shortage of physical cash were held which were fraudulently reflected in cheque and coin columns.

Charge No. 2

You, as in charge of cash in the absence of 2nd man on different dates, you did not ensure proper entries of cash movement in Cash Reserve Register and the said register was not maintained properly.

Charge No. 3

You being responsible supervising staff, you received cash from Head Cashier on 25/02/2008 for Rs. 20,000/- and Rs. 5000/- against incomplete withdrawal slips without ensuring their proper debit to the account and passing for making them valid payment instruments."

3. The petitioner submitted his written submission to the charge on 27.1.2009. In his written submission it was admitted that the Head Cashier used to maintain less physical cash in the safe which was very much in the knowledge of the Manager. It was also stated that, however, the difference of cash reflected in cheques submitted to him for encashment was reconciled the next working day. The petitioner had also stated that due to sheer lack of book keeping knowledge, he used to endorse the entries made in the requisite cash registers by the Head Cashier in good faith. As regards the third charge, it was submitted that the receipt of cash on 25/02/2008 from the Head Cashier was against his salary of the respective month which was delayed for entry in his account but it was done with the knowledge of the Manager. The petitioner contended that these aforesaid irregularities have been committed due to lack of accountancy knowledge and without any malafide intention.

4. The departmental enquiry was duly held against the petitioner. As per the enquiry report, all the charges stood proved as being admitted by the petitioner. A copy of the enquiry report dated 23.03.2009 was made available to the petitioner who submitted his reply reiterating his stand vide his representation dated 11.05.2009 to the authority and to take into consideration his untainted service record of 28 years which the petitioner claimed to have served with sincerity and prayed for taking a lenient view. The disciplinary authority considered the reply submitted by the petitioner and issued the penalty order dated 16.05.2011 and imposed the penalty of "Compulsory retirement with superannuation benefits and without disqualifying from future employment".

5. Against the said order of penalty dated 16.05.2011, the petitioner preferred an appeal before the appellate authority on 27th June, 2011. In the said appeal, the petitioner raised various grounds in challenging the procedure adopted in the enquiry stating that no opportunity of engaging a Defence-cum-Assistant was given to the petitioner, neither any opportunity was given to produce witness. It was also alleged that the disciplinary authority had conducted the enquiry under threat, etc. and also alleged that the enquiry officer acted in a biased manner.

6. Even though the learned counsel for the bank had produced the record of the departmental enquiry in respect of the petitioner before this Court, the said

record does not contain the day-to-day recording of the enquiry proceeding because of which this Court is not able to examine the contentions raised by the petitioner that the petitioner had not been given the opportunity to engage a Defence Assistant or that he had been denied the opportunity to produce defence witnesses and also the allegation that the enquiry officer had acted in a biased manner.

This Court has also noted that the appellate authority, however, has not adverted to any of these contentions raised by the petitioner in his appeal. Perusal of the order dated 18.02.2012 passed by the appellate authority would show that the appellate authority was merely concerned with the establishment of the charge against the petitioner and did not discuss anything on the issues raised by the petitioner and also regarding the nature of penalty imposed on him.

It may be mentioned that as per Para 12(c) of the Bipartite Settlement, the authorities while imposing the penalty have to keep in mind various considerations as mentioned in the said para, viz., (i) the gravity of the misconduct, (ii) the previous record, if any, of the employee and (iii) any other aggravating or extenuating circumstances, that may exist. It has been, however, noted that in the order passed by the appellate authority there is no reference to such factors which were required to be considered at the time of imposing the penalty. Therefore, this Court is of the view that the authorities have failed to show that they had kept these aspects in mind while imposing the aforesaid penalty and as such, the same is liable to be interfered with to the extent indicated above. Accordingly, the respondent authorities are directed to re-examine this issue of the penalty being imposed on the petitioner in light of materials available before it and by keeping in mind the considerations mentioned in para 12(c) of the Bipartite settlement.

7. The contention of Mr. A. Deni Sharma, learned counsel for the Respondent Bank, which is based on the decision of the Supreme Court in Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, , can be considered only after the Disciplinary Authority has passed the order of penalty in terms of Para 12(c) of the Bipartite Settlement. The Disciplinary Authority is under statutory obligation to take into consideration the factors mentioned in Para 12(c) of the BPS, failing which such an order of penalty will suffer from the vice of non application of mind. This lapse can not be covered by the authority by relying on the aforesaid decision of the Supreme Court. The issue of proportionality of penalty in respect of bank employees as highlighted by the Supreme Court in the said decision can be considered only when the disciplinary authority has discharged the statutory obligation which in the present case, has not been done as discussed above.

8. In the result, the writ petition is allowed by interfering with the impugned order dated 16.5.2011 issued by the Disciplinary Authority and the order dated 18.2.2012 issued by the Appellate Authority to the extent indicated above and is accordingly set aside. The Disciplinary Authority is directed to pass a fresh order

of penalty by keeping in mind the considerations as mentioned in Para 12(c) of the Bipartite Settlement as well as the contentions raised in his appeal preferred to the Appellate Authority on 27.6.2011 as expeditiously as possible, against which the petitioner will have the right to prefer the statutory appeal, if aggrieved with the order of the Disciplinary Authority that may be passed as directed by this Court, in accordance with the rules. Since, the impugned order of penalty dated 16.5.2011 passed by the Disciplinary Authority and the order dated 18.2.2012 passed by the Appellate Authority have been set aside, the petitioner shall be deemed to be under suspension w.e.f. 16.5.2011 till passing of the fresh order of penalty, which period will be dealt with by the authority appropriately as regards entitlement in accordance with the relevant service rules for which the Disciplinary Authority may also invoke the principle of "no work no pay."

9. With the above observations and direction, this writ petition is disposed of.