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(2011) 05 UK CK 0117

In the Uttarakhand High Court

Case No : Restoration Application No. 257 of 2011 Delay Condonation Application in Restoration Application No. 3076 of 2011 in Writ Petition No. 287 of 2005 (S/B)

Umesh Kumar Pahwa APPELLANT

Vs

Board of Directors and Another RESPONDENT

Date of Decision : 11-05-2011

Acts Referred:
Staff Service Regulations, 2001 — Regulation 1

Citation : (2011) 05 UK CK 0117

Hon'ble Judges : Barin Ghosh, C.J;Servesh Kumar Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Barin Ghosh, C.J.

Delay Condonation Application in Restoration Application No. 3076/2011

1. Considering the averments made in the application for condonation of delay in filing the application for restoration and being satisfied with the reasons thus furnished, we allow the application.

Restoration Application No. 257/2011

2. Inasmuch as, the reason for dismissal of the writ petition for default was non-appearance of the learned Counsel engaged by the Petitioner and taking into account the fact that no litigant can suffer for the default or laches on the part of his chosen counsel, we allow the application for restoration, on condition that the counsel for the Petitioner shall pay a cost of Rs. 500/- with the High Court Legal Service Committee within a period of two weeks from today.

Writ Petition No. 287 of 2005 (S/B)

3. By consent of the parties, the writ petition is taken up for final hearing.

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4. The Managing Director of the Respondent Gramin Bank, being the appointing authority of the Petitioner, was also the disciplinary authority of Petitioner. Until coming into force of the Staff Service Regulations, 2001, which came into force on 25.9.2001, having been published in the official gazette on the said date, in terms of Clause (ii) of Regulation 1 of the said Regulations, the service conditions of the Petitioner, pertaining to disciplinary matters, were governed by the Staff Service Regulations, 1983. A disciplinary proceedings, under the 1983, Regulations was initiated by issuing a charge sheet dated 15.10.1998. That having been replied, a supplementary charge sheet was issued on 13.11.1998. That too was replied. Being not satisfied with the replies thus given, the disciplinary authority appointed an Enquiry Officer to inquire into the truth and substance of the charges leveled in the charge sheet as well as in the supplementary charge sheet. The Enquiry Officer inquired into the matter, when the Petitioner duly participated in the enquiry proceedings. Subsequent thereto, the Enquiry Officer submitted his report dated 11.5.1999. While copy of the enquiry report was not sent to the Petitioner, the disciplinary authority asked the Vigilance Department of the employer to give its opinion pertaining to certain matters involving the Petitioner, but not referred to in the charge sheets. Vigilance Department, thereupon, submitted its opinion to the disciplinary authority. Considering the enquiry report and the report of the Vigilance Department, the disciplinary authority passed an order dated 22.6.1999 and thereby concluded the disciplinary proceedings.

6. By the order dated 22.6.1999, Petitioner was awarded major punishment by degrading him by five stages in his incremental scale with a further direction that the period of suspension of the Petitioner shall be treated as period not spent on duty. Petitioner preferred an appeal against the said order, which was rejected by the appellate order dated 6.5.2000. Petitioner then approached this Court by filing a writ petition registered as Civil Misc. Writ Petition No. 166 of 2001. A Division Bench of this Court noticed that the disciplinary proceeding was concluded without giving a copy of enquiry report to the Petitioner and, accordingly, held that the disciplinary proceedings stood vitiated. The Division Bench, accordingly, quashed the punishment order, namely, the order dated 22.6.1999, reserving liberty of the Respondent Gramin Bank to proceed afresh in accordance with law.

7. Subsequent thereto, a copy of the enquiry report and a copy of the vigilance report were furnished to the Petitioner. Petitioner gave his representation against those reports. In the representation, Petitioner highlighted that since the matters alleged in the vigilance report, were not alleged in the charge sheet, Petitioner had no opportunity to contest those allegations and, accordingly, in law, no cognizance thereon can be taken in a disciplinary proceeding. In relation to the enquiry report, Petitioner contended that while the Enquiry Officer has specifically exonerated the Petitioner in respect of certain specific charges, but a look at the enquiry report and other supporting documents, would amply demonstrate that there was no misconduct on the part of the Petitioner and at

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the best, certain minor negligence or inability to achieve the best while discharging duties of the Bank stood proved. This representation was made by the Petitioner on 29.10.2001. However, the disciplinary authority, on 10.3.2003, asked the Petitioner to give his further defence. On 29.4.2003, Petitioner gave his further defence, where once again, he highlighted the matters already highlighted in his earlier representation. Thereupon, by an order dated 16.9.2003, the disciplinary proceeding was concluded by the disciplinary authority by passing an order of punishment. In the order, the disciplinary authority observed, amongst others, "I have come to the conclusion that all the charges mentioned in the charge sheet dated 15.10.1998 and supplementary charge sheet dated 13.11.1998 against the C.S.O. are established".

8. At this juncture, it would be necessary to highlight that the Enquiry Officer absolved the Petitioner in respect of certain charges. In regard to those charges, the disciplinary authority did not inform the Petitioner at any stage that the disciplinary authority is not ad idem with the findings of the Enquiry Officer in respect of those charges, after giving reasons for taking a different view and giving an opportunity to the Petitioner to make a representation against such reasoning. In the circumstances, the disciplinary authority, in law, could not hold that all charges against the Petitioner stand proved. After having had concluded that all charges against the Petitioner stood proved, the disciplinary authority decided to punish the Petitioner, which clearly indicates that taking into account the effect of proof of all charges, the punishment order was passed, when the fact remains some of the charges were not proved. The order is such, as will be referred immediately hereafter, that the same cannot be dissected and, accordingly, it is not possible for us to say which part of the order was passed in respect of the charges which stood proved in law, and which part of the order was passed in respect of the charges which were not proved in law. In those circumstances, the order is such that the same is not sustainable.

9. Furthermore, the Staff Service Regulations, 2001, expressly repealed the Staff Service Regulations, 1983. Despite that, while passing the said order dated 16.9.2003, the disciplinary authority stated as follows: -

In exercise of powers conferred upon me by Nainital- Almora Kshetriya Gramin Bank, Staff Service Regulations 2001 and also keeping in view, the scale of punishment indicated in Staff Service Regulations, 1983, I hereby order as follows-

Mr. Umesh Kumar Pahwa be degraded by five stages in his incremental scale and the period of his suspension w.e.f. dated 16-09-1998 to 22-06-1999 be treated as period not spent on duty.

10. Apparently, the Staff Service Regulation, 2001, does not authorize, either by way of punishment or otherwise, to treat suspension period as period not spent on duty unless the delinquent is removed or dismissed from service. The power granted by the said Regulation to do otherwise can only be exercised in

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exceptional circumstances, which in turn requires indication of such circumstances and that is absent in the instant case. The disciplinary authority, therefore, as on the date of passing of the order dated 16.9.2003, was not competent to pass an order treating the period of suspension of the Petitioner not on duty. For that reason too, the order of the disciplinary authority is interferable.

11. Against the order of the disciplinary authority dated 16.9.2003, Petitioner preferred an appeal before the Board of Directors of the Respondent Gramin Bank, which according to the Regulations of 2001 is the appellate authority.

12. The Board of Directors of the Respondent Gramin Bank is also comprised of the Chairman of the Respondent Gramin Bank. By a communication dated 5.1.2005, signed by the Chairman of the Board of Directors of the Respondent Gramin Bank, Petitioner was informed that the appeal, submitted by the Petitioner, has been dismissed by the Bank''s Board in its meeting held on 9.11.2004. In the counter affidavit, filed by the Respondent Gramin Bank, it has been stated that the Chairman of the Respondent Gramin Bank did not participate in the proceedings of the Board of the Respondent Gramin Bank, when the appeal of the Petitioner was being considered. However, the minutes of the meeting of the Board dated 9.11.2004 have not been produced by the Respondent Gramin Bank to substantiate the said contention.

13. The communication, referred to above, did not give any indication why the appeal was decided to be dismissed. The Board, in the instant case, was discharging quasi judicial function. A quasi judicial authority is required to give reasons in support of its decision for the purpose of at least letting the loosing party know why he has lost. That having not been done in the instant case, the order of the appellate authority is also interferable.

14. In the circumstances, we allow the writ petition and quash the order of the disciplinary authority as well as the order of the appellate authority and remit back the matter to the disciplinary authority for dealing the same in accordance with the Regulations of 2001. The disciplinary matter is pending since 1998 and, accordingly, it is hoped and expected that the matter be concluded finally by the disciplinary authority as quickly as possible, but not later than six months from the date of submission of a copy of this order upon the Respondent bank and if an appeal is preferred, the same be also decided in accordance with the same Regulations within a period of three months from the date the appeal is preferred.

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