

(2012) 09 UK CK 0005

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 177 of 2012

Umesh Kumar Pahwa

APPELLANT

Vs

The Board of Directors and Others

RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Citation : (2012) 3 UC 1909

Hon'ble Judges : Barin Ghosh, C.J;Umesh Chandra Dhyani, J

Bench : Division Bench

Advocate : Umesh Kumar Pahwa, for the Appellant; Lalit Belwal, Advocate for respondent nos. 1 and 2, for the Respondent

Final Decision : Disposed Off

Judgement

Barin Ghosh, C.J.—A charge sheet dated 15th October, 1998 followed by a supplementary charge sheet dated 13th November, 1998 was issued against the petitioner. In the charge sheet dated 15th October, 1998, it was stated that the charges will be inquired by an Inquiry Officer appointed thereby. No reply was sought from the petitioner. The charges were inquired by the Inquiry Officer on 5th January, 1999. After the inquiry, the Presenting Officer submitted his written submissions on 12th February, 1999 and the petitioner submitted his written arguments on 16th March, 1999. The Inquiry Officer, then, submitted his report on 11th May, 1999. The copy of the Inquiry Report was not served upon the petitioner, but the disciplinary proceeding was brought to an end by issuing a final order dated 22nd June, 1999. By that, petitioner was degraded by five stages in his incremental scale and his period of suspension was treated as period not spent on duty. After having had lost in the appeal, petitioner approached the Hon'ble Allahabad High Court by filing a writ petition challenging the disciplinary order and the appellate order. The writ petition was transferred to this Court, whereupon a Division Bench of this Court, by an order dated 2nd July, 2001, quashed the disciplinary order and the appellate order on the ground of non supply of Inquiry Report, but preserved the liberty of the employer to

proceed afresh according to law. The fact remains that before the disciplinary order dated 22nd June, 1999 was passed, while the Inquiry Report was not served upon the petitioner, the Disciplinary Authority obtained certain opinion of the then Chief Vigilance Officer, which, too, was not communicated to the petitioner. The employer, however, in exercise of liberty granted by this Court by its order dated 2nd July, 2001 forwarded a copy of the enquiry Report as well as the opinion of the then Chief Vigilance Officer to the petitioner with a request to the petitioner to give his submissions in regard thereto. Petitioner gave his representation/submission, which having been considered along with other records, the Disciplinary Authority passed the 2nd disciplinary order on 16th September, 2003 and, thereby, degraded the petitioner by five grades in his incremental scale with a direction that the period of suspension be treated as period not spent on duty. Having had lost in appeal, preferred against the 2nd disciplinary order, petitioner approached this Court by filing a writ petition. A Division Bench of this Court, noticing the fact that while passing the 2nd disciplinary order, the Disciplinary Authority proceeded to hold that the Inquiry Officer has found guilt of the petitioner proved in respect of all the charges and, accordingly, passed the punishment order, but, in fact, the Inquiry Officer absolved the petitioner of at least some of the charges, as were levelled against him, held that the order was not sustainable. The Division Bench also noticed that the Staff Service Regulations, 2001 expressly repealed the Staff Service Regulations, 1983, but while the 2nd disciplinary order was passed, the same was also purportedly based on the repealed Staff Service Regulations, 1983. The Division Bench, further, indicated that, in terms of the Staff Service Regulations, 2001, suspension period can be treated as period not spent on duty only in case when the delinquent is removed or dismissed from service and also in exceptional circumstances indicating requirement to furnish circumstances, which were not disciplinary order. For those reasons and for some other reasons, the 2nd disciplinary order and the 2nd appellate order were quashed and the matter was remitted back to the Disciplinary Authority. The Disciplinary Authority has, in the circumstances, passed the 3rd final disciplinary order dated 22 September, 2011. By that order, petitioner's pay has been reduced by five stages in grade/time scale-II for a period of one year, but with a direction that the petitioner will not earn increment during the period of punishment, i.e. for one year and his basic pay shall (for that one year) remain constant during the said period and, on expiry of the period of one year, the reduction shall have effect of postponing future increments of his pay. Therefore, the net effect of the order is that, for one year, petitioner will obtain salary in five stages below in the grade/time scale-II, during that period he will not be entitled to any increment and, on the expiry of the period of one year, the reduction shall have effect of postponing future increments of his pay, namely, while his pay will stand revived to the scale, from which, five grades were reduced, but for not getting the increment during that year, his future increment will get postponed. Petitioner has challenged this order on 2 fold ground; the first is that the employer since 1999 is seeking to pass the same order by hook or crook, which suggests mala fide and non-application of

unbiased mind in relation to the disciplinary proceedings. We think that the 3rd disciplinary order is quite different from the land the 2nd disciplinary orders, and that, the 3rd present in the 2nd disciplinary order is less harsher than the 1st and the 2nd disciplinary orders. In terms of the 1st and the 2nd disciplinary orders, petitioner was to lose his five increments for all time to come, in terms of the 3rd disciplinary order, petitioner is to lose for one year five increments and not beyond. He will, however, lose the benefit of one increment during that period of punishment since he will not get one increment during that period. Therefore, it would not be appropriate on our part to accept the contention of the petitioner that the 3rd disciplinary order is repetition of the 1st and the 2nd disciplinary orders, which would indicate non-application of mind or of biased action.

2. Petitioner contends that the charges levelled against the petitioner were not proved in course of inquiry. It has been contended that, inasmuch as, the charges have not been proved, question of passing any disciplinary order did not arise. Petitioner has painstakingly taken us through the charge-sheets, findings of the Inquiry Officer and the representation made by the petitioner against the Inquiry Report. He submitted that, on the basis of the materials on record, it would be evidenced that the principal charges, as were levelled against the petitioner, were not proved. In writ jurisdiction, the Court does not sit in appeal against actions of the nature complained of in the writ petition. The Court only tries to ascertain, whether, on the basis of the materials on record, the stand taken is such a stand, which a prudent person, on being informed of the materials, could take. The Court cannot say that a better stand could be taken. That being the standard of appreciation of the materials by a writ court and, having had done that exercise, we are of the opinion that, on the basis of the materials, as were brought on record, and having regard to the nature of the charges levelled and answers given thereto, it would be possible for a prudent person to come to the conclusion that the charges to the extent pointed out by the Inquiry Officer and by the Disciplinary Authority do stand proved. If that be the conclusion, the question is, whether the punishment as awarded is commensurate with the guilt proved. We think that the charges against the petitioner were serious in nature. Petitioner in his capacity as a Bank Manager was holding the post of trust, not only of the Bank, but of the people at large. His actions, as such trustee, cannot be equated with actions of ordinary employees may be serving even the Bank. Having regard to the nature of the allegations made against the petitioner and having regard to the findings recorded, it would not be possible for us to hold that the punishment awarded is disproportionate.

3. The fact remains that by the 3rd disciplinary order, the punishment, as above, has been made effective from 16th September, 2003, i.e. the date of the 2nd disciplinary order.

4. The 3rd disciplinary order directed that the period of suspension of the petitioner shall be treated as period not spent on duty. The fact remains that the

Staff Service Regulations, 2001, which was governing the field on 16th September, 2003 as well as the Staff Service Regulations, 2010, which was governing the field on 22nd September, 2011 provided as follows:

The period during which an officer or employee is under suspension shall, if he is not removed/dismissed from services, be treated as period spent on duty or otherwise as the competent authority may direct.

5. Therefore, the normal rule is, in case of removal or dismissal, the period of suspension shall not be treated as the period spent on duty. In other cases, the period of suspension shall be treated as spent on duty, but the competent authority has been authorized to direct otherwise.

6. The Division Bench of this Court, while interpreting the said Clause, pointed out in its order dated 11th May, 2011 that the competent authority may direct otherwise than the normal rules in exceptional circumstances and, accordingly, is required to spell out such exceptional circumstances. In the instant case, in the order directing treatment of period of suspension as period not spent on duty, the exceptional circumstances have been alleged as follows:

In view of the allegations and charges expected to be leveled and proved against the Charged Officer, the nature and seriousness of the irregularities reported and the evidence available on records, the punishment of severe nature was very much expected. Tampering of evidence by the Charged Officer was also very much expected which was warranting suspension of the Charged Officer and therefore he remained suspended w.e.f. 16.09.1998 to 22.06.1999.

7. The above observation is not indication of any circumstances taking a decision contrary to the normal rules. If punishment of severe nature was expected, then such punishment ought to have had been meted out. If tampering of evidence was expected, petitioner should have been charged therefor. In the circumstances, the order directing that the period of suspension of the petitioner be treated as period not spent on duty is not sustainable. That part of the 3rd disciplinary order dated 22nd September, 2011 is quashed.

8. Petitioner has correctly submitted that the order of punishment be treated from 22nd September, 2011 and not from 16th September, 2003. We accede to the said contention, inasmuch as, question of passing any disciplinary order with retrospective effect does not arise. There is no concept of passing any such order. The justification for passing the order with retrospective effect from 16th September, 2003 appears to be direction of the Division Bench contained in its order dated 11th May, 2011, by which the matter was remitted back to the Disciplinary Authority, but nowhere in the said order, the Division Bench directed or authorised passing of a disciplinary order with retrospective effect. With the directions as above, the writ petition is disposed of.