(2011) 01 AHC CK 0091

In the Allahabad High Court

Case No : Civil Misc Writ Petition No. 830 of 2003

Vinod Kumar Tiwari APPELLANT

Vs

Sri Devendra Kumar Manchanda and Others RESPONDENT

Date of Decision : 05-01-2011

Acts Referred:

Citation : (2011) 01 AHC CK 0091

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri Indra Mani Tripathi, Advocate for the Petitioner and Sri Jayant Banerji, Advocate appearing for the RespondentBank and its officials.

2. Both these writ petitions relate to the disciplinary proceeding initiated against the Petitioner, Vinod Kumar Tiwari, hence as agreed and requested by learned Counsel for the parties have been heard together and are being decided by this common judgment.

3. The Writ Petition No. 24003 of 2002 is against the order of suspension dated 05.06.2002.

4. In Writ Petition No. 830 of 2003 the Petitioner has assailed the entire inquiry proceedings initiated against him pursuant to charge sheet dated 24.06.2002 (Annexure10 to the writ petition) and also the orders dated 07.11.2002 and 21.11.2002 passed by the Senior Manager and General Manager of Aligarh Bramin Bank, Aligarh (hereinafter referred to as the "Bank").

5. The order dated 07.11.2002 (Annexure19 to the writ petition) has been issued by Senior Manager of the Bank declining to accept the request of Petitioner to engage an Advocate as Defence Assistant in the departmental inquiry. The order dated 21.11.2001 (Annexure25 to the writ petition) is issued by General Manager of the Bank declining his (Petitioner) request for change of Inquiry Officer.

6. It is commonly accepted by learned Counsels for the parties that the inquiry proceedings were stayed by this Court on 20.01.2003 hence could not have been completed till date though more than seven years have passed.

7. The facts, in brief, giving rise to the present writ petition may be mentioned hereinafter so as to keept the record straight.

8. The Petitioner was selected and appointed as Probationary Officer on 25.10.1990. After completion of probation he was confirmed as Officer ScaleI. He was also an office bearer of the Aligarh Gramin Bank Officer''s Association. While working at Ratibhanpur Branch of the Bank, where he was joined on 15.04.2002 after being transferred from Mursan (Hathras) on 05.04.2002, the Petitioner was placed under suspension vide order dated 05.06.2002 (Annexure4 to the writ petition). The suspension was in a pending disciplinary proceeding under Regulation 45(1) of Aligarh Gramin Bank (Officers & Employees) Service Regulation, 2000 (hereinafter referred to as the "Regulation 2000") in the matter of fraudulent withdrawal from Savings Bank Account No. 11092 of one Sri Vijay Kumar Sharma, a Customer of Mursan Gate Branch of the Bank by tempering in the records. For the same reason another employee, namely, H.K. Badmera, a ClerkcumCashier of the Bank was also placed under suspension vide order of the same date. The Petitioner assailed the suspension order in Writ Petition No. 24003 of 2002. This Court stayed the order of suspension on 12.06.2002 passing the following order:

Sri Manoj Kumar Advocate may file counter affidavit on behalf of Respondent No. 1 within one month.

Apart from normal mode of service the Petitioner shall also serve Respondents No. 2 and 3 personally.

Steps shall be taken within a week.

The Respondents may also file counter affidavit within one month.

In the meantime the operation of impugned order dated 05.06.2002 shall remain stayed.

9. It is alleged that despite the stay order Petitioner was not given charge by the authorities concerned hence he filed Contempt Petition No. 1645 of 2002 wherein notice was issued to Respondent no. 1 on 11.07.2002.

10. A charge sheet was issued to Petitioner on 24.06.2002 containing a single charge alleging violation of Regulation 19 and 30 read with 38 of Regulations, 2000. The charge relates to fraudulent withdrawal of amount from savings bank account of Sri Vijay Kumar Sharma.

11. A similar charge sheet also appears to have been issued to Sri H.K. Badmera, ClerkcumCashier on 24.06.2002. The Respondent no. 2, Sri P.K. Saxena, Senior Manager conducted departmental inquiry and submitted his report on 09.10.2002. The Respondent no. 1 thereafter revoked suspension of H.K.

Badmera vide order dated 10.04.2002 with the condition that the period of suspension will be treated in the light of the order passed to imposition of punishment later on.

12. The Respondent No. 2, Sri P.K. Saxena was also appointed Inquiry Officer to hold departmental inquiry against the Petitioner vide letter dated 23.07.2002. Sri Saxena was a Senior Manager of the Bank''s main Branch at Ramghat Road, Aligarh. One Sri Rajesh Kumar, Officer ScaleII was appointed as Presenting Officer, on behalf of the Bank, by another letter dated 23.07.2002. The Inquiry Officer issued letter dated 10.10.2002 fixing 19.10.2002 as the first date of oral inquiry, to be held on Aligarh main Branch. This was communicated to Petitioner on 12.10.2002. The Petitioner however sent letter dated 12.10.2002 seeking permission of Chairman of the Bank to engage an Advocate as his Defence Assistant for which his approval was necessary under Regulation 43 of the Regulations, 2000. He also forwarded copy of the said letter to Inquiry Officer with further request that till the letter is replied, inquiry proceeding be deferred.

13. Interestingly the Petitioner sent another letter dated 12.10.2002 informing the Inquiry Officer him that the Petitioner has to attend another inquiry of some other employee wherein he is a Defence Assistant of such employee which is fixed on 19.10.2002, therefore, the proceeding contemplated to be held on 19.10.2002 be adjourned. The Petitioner claim that he tried to serve both the letters dated 12.10.2002 to the Branch Manager at Ratibhanpur who refused and hence the letters sent by registered post.

14. The Petitioner did not attend inquiry proceeding on 19.10.2002 before Respondent No. 2 but admittedly attended inquiry proceeding of another employee, namely, Sri R.K. Yadav on 19.10.2002 before Sri T.N. Gupta, Inquiry Officer where the Petitioner was a Defence Assistant of the delinquent employee.

15. The Inquiry Officer, Respondent No. 2, it appears, did not conduct any proceeding on 19.10.2002 and adjourned the matter to 26.10.2002. After receiving information vide Inquiry Officer''s letter dated 21.10.2002, the Petitioner again sent letter dated 24.10.2002 informing the Inquiry Officer that firstly he is already engaged to appear as Defence Assistant in another inquiry of another employee on 26.10.2002 and secondly, his application for engagement of an advocate as Defence Assistant is still pending and has not been disposed of, therefore, the inquiry be deferred till order on his application is passed by the Chairman of the Bank.

16. The Petitioner, however, chose to attend oral inquiry before Respondent No. 2 on 26.10.2002 on which date the Presenting Officer produced charge sheet and Petitioner''s reply which were marked exhibits by the Inquiry Officer. The Petitioner has averred in para 26 of the writ petition that he tried to raise certain preliminary objections before Inquiry Officer which he declined to record. This shows that Respondent No. 2 was biased against Petitioner. The Petitioner also has asserted that on the very first date of oral inquiry, he told Inquiry Officer that

he is biased.

17. The Petitioner''s request for engagement of an Advocate as Defence Assistant was declined by the competent authority, by letter dated 07.11.2002. The Petitioner claimed to have received this letter on 22.11.2002.

18. The Petitioner thereafter nominated one Sri R.P. Singh as his Defence Representative/Defence Assistant who was an officer of another Bank, namely Central Bank of India. The Petitioner himself has placed on record a judgment dated 03.12.2002 passed by this Court in Civil Misc. Writ Petition No. 48308 of 2002, Sri Latoori Singh v. Chairman Aligarh Gramin Bank, wherein this Court considered the question as to whether an employee of the Bank could engage a Defence Assistant of another Bank and held as under:

In the above conspectus, I veer round to the view that Aligarh Gramin Bank (Officers and Employees) Service Regulations 2002 does not proscribe engagement of any person from a Bank other than the Respondent Bank.

19. The Petitioner on 02.11.2002 made a request for change of the Inquiry Officer making certain allegations against him. This request was turned down by letter dated 21.11.2002. he submitted another letter dated 23.11.2002 nominating Sri R.P. Singh, Special Assistant, Central Bank of India, Aligarh as his Defence Assistant.

20. Thereafter inquiry proceedings were conducted on 14.12.2002 and 20.12.2002. On both the dates Petitioner insisted before the Inquiry Officer to allow him to be represented by Sri R.P. Singh as Defence Assistant in view of the observations made by this Court in Latoori Singh (supra).

21. In para 31 the Petitioner has made certain allegations against Respondent No. 2 in order to show that he was biased against the Petitioner. The Petitioner thereafter filed the present writ petition challenging the entire inquiry proceeding as well as the orders dated 07.11.2002 rejecting his request for engagement of Advocate as Defence Assistant and dated 21.11.2002 rejecting Petitioner''s request for change of Inquiry Officer.

22. Learned Counsel for the Petitioner has confined his arguments to the correctness of the orders dated 07.11.2002 and 21.11.2002. He has not advanced any argument assailing entire inquiry proceeding at all. In fact when enquired by the Court, he could not point out any palpable illegality in the departmental inquiry so as to warrant interference by this Court at this stage, hence confined his arguments only to the question whether he is entitled to be represented through an Advocate as Defence Assistant as also his right to get the Inquiry Officer changed.

23. I would consider both these questions of his allegations of bias against the Inquiry Officer, request for change of Inquiry Officer and also his right to be represented by an Advocate.

24. My attention was drawn to paras 26, 27, 30 and 31 of the writ petition in order to show the allegations made by Petitioner against the Inquiry Officer to demonstrate his alleged bias. It is interesting to notice that all these paragraphs have been sworn on the basis of record without supporting the same by record. Several vague allegations of undue influence etc. have been levelled in all these paras but nothing has been placed on record to support the same. Moreover these averments have been sworn on the basis of record. The correctness, therefore, of the allegations is apparently doubtful and unreliable. Even otherwise, record is self speaking to show how the Petitioner has tried to defer the proceedings in one or the other way instead of cooperating. He admits that a similar charge sheet was issued to another employee and it is also evident from record that the said employee participated in departmental inquiry which resulted in submission of inquiry report as long back as on 09.10.2002, as a result whereof the Chairman revoked suspension order of the said employee, i.e., Sri H.K. Badmera. The Petitioner, however, as soon as received the charge sheet, without even submitting any reply to the same, sent an application for engaging an Advocate as Defence Assistant and thereafter tried to get the inquiry proceedings deferred though he could find enough time in the meantime to appear himself as Defence Assistant in the departmental inquiry of an other employee.

25. The Petitioner admits that he is representing other employees as their Defence Assistant in departmental inquiries. It means that he is quite conversant with the technicalities and minutes relating to departmental inquiry, Bank Regulations, Operating procedure etc. He was an officer having experience of more than a decade when proceedings were initiated against him. In his letter dated 12.10.2002 (Annexure15 to the writ petition) he has not given any reason whatsoever as to why an Advocate as a Defence Assistant must be allowed by the competent authority in exercise of power under Regulation 43 of Regulations, 2000.

26. At this stage, it would be appropriate to refer Regulation 43 as under:

43. Restriction on engagement of a Legal Practitioner For the purpose of enquiry, the officer or employee shall not engage a legal practitioner without prior permission of the Competent Authority.

27. The language in which Regulation 43 is couched makes it clear that engagement of a legal practitioner as an Defence Assistant is not a matter of rule but can be allowed by the competent authority in its discretion by giving prior permission. It means that the employee concerned has to plead a case for making it necessary for engagement of a legal practitioner as a Defence Assistant and not on mere asking such a prior permission is supposed to be granted. He has to give cogent reasons in support of his request.

28. The Single Judge''s decision in Latoori Singh (supra) was taken in intraCourt appeal. The Division Bench vide judgment dated 10.03.2003 set aside the

judgment of Hon''ble Single Judge and allowed the appeal. The reliance, therefore, on the Judgment of Latoori Singh (supra) of Hon''ble Single Judge is wholly misplaced.

29. While considering the scope of Regulation 43 the Division Bench observed that the scheme of Regulations show that in special circumstances an employee against whom disciplinary proceeding has been initiated, if so requests, may be allowed to be represented through a legal practitioner. The relevant considerations to be taken into account by the competent authority while considering such request is to ensure that the defence does not get debilitated due to inexperience or personal embarrassment. Representation through a legal practitioner or otherwise is not a matter of right and does not constitute an element of principle of natural justice which would vitiate the proceedings provided if the rules so permits, the competent authority has considered the matter in the light of the fact and circumstances of the case. One of the relevant consideration is if the presenting officer a legal practitioner or a legally trained person, as a result whereof the delinquent employee finds himself incapable or sufficient enough to put up his defence, the representation through a legal practitioner, if so prayed, may be allowed. In para 20 of the judgment reported in 2003 (2) ESC 818 the Division Bench observed that prior permission contemplated in Regulation 43 is to keep a check on frivolous and unnecessary requests made for legal practitioner if the facts and situation do not warrant so. In para 21 of the judgment the Division Bench says:

Regulation 43 amply protect the interest of the employee or the officer and the said employee or the officer can seek assistance of the legal practitioner in case where he is able to demonstrate that the defence representative from the same organisation will not be able to function independently or there are any other good reason for permitting a legal practitioner.

30. As already discussed above, nothing has been said by the Petitioner as to what are the special circumstances for engagement of legal practitioner as a Defence Assistant. Learned Counsel for the Petitioner sought to refer his rejoinder affidavit stating that Inquiry Officer as well as the Presenting Officer both are law graduates and has also practised as Advocate hence the Petitioner needed to be defended by a legal practitioner. In support of his averment contained in para 3 of the rejoinder affidavit, he has placed on record their qualifications but nothing has been placed in support of the fact that they ever practised as an Advocate. Para 3 of the rejoinder affidavit wherein these averments have been made has been sworn on the basis of record and not on personal knowledge.

31. Be that as it may, it is evident that the Petitioner did not find it a relevant reason for seeking help of legal practitioner as nothing of this sort has been mentioned in his application dated 12.10.2002 (Annexure15 to the writ petition). Even the writ petition is totally silent. Moreover, it is admitted by the Petitioner himself that he refrained from insisting upon his request for engagement of legal

practitioner, but submitted later on applications to the Bank to permit him to engage Sri R.P. Singh, an employee of Central Bank of India who was not a legal practitioner. That being so, it is evident that Petitioner did not insist upon his request for engagement of a legal practitioner. The order impugned in the writ petition, therefore, does not warrant any interference. Various authorities cited by Petitioner do not apply to the facts of this case.

32. Now coming to the question of change of Inquiry Officer, as already discussed above, the Petitioner has failed to make out any case by demonstrating even a reasonable apprehension of bias warranting interference at this stage. From day one, as is evident from the facts stated above, he attempted in one or the other way to to deferment of the inquiry though simultaneously he found enough time to attend inquiry of another employee where he was a Defence Assistant. Moreover, the proceedings of the oral inquiry as appended to the writ petition also show that the Petitioner is wholly competent to defend himself and has made reckless allegations against everybody just to have proceedings deferred and in that way he is able to get the proceeding deferred for the last seven years. This position is really neither warranted nor in the interest of Bank as well as the public at large. The allegations levelled against the Petitioner in the charge sheet are very serious. If the same is true obviously it would be a case of major penalty since such an employee/officer ought not be tolerated to continue in Bank service even for a moment but if the charges are not proved the accusation must come to an end at the earliest as that would influence the Petitioner''s further carrier. The inquiry, therefore, must conclude expeditiously.

33. Now coming to the merits in Writ Petition No. 24003 of 2002 involving legality of the order of suspension, the Petitioner could not show any legal infirmity therein. Neither it is his case that the suspension has been made by an authority not competent to do so nor that it is not permissible under the Rules nor that it is vitiated in account of mala fide of any authority. In fact what has been tried to stress upon is that since the Petitioner was an office bearer of the officers'' association of the Bank hence to victimise him the suspension order was passed. As already discussed above, a departmental inquiry was initiated against Petitioner in respect to an allegation which if correct constitute serious charge. In pendency thereof the Petitioner has been placed under suspension. The disciplinary inquiry could not have been concluded for non cooperation of Petitioner. Delay, if any, this Court is satisfied, not attributable to the Respondents. In the circumstances, no interference is called for in the impugned order of suspension.

34. In the result, both the writ petitions being devoid of merits are dismissed. The Petitioner is liable to pay costs which is quantified to Rs. 10,000/for each writ petitions.

