

**(2021) 12 J&K CK 0031**

**In the Jammu And Kashmir High Court**

**Case No : Service Writ Petition (SWP) No. 1755 Of 2007**

Zia Ud Din Chungal

APPELLANT

Vs

Kashmir Mercantile Cooperative Bank

RESPONDENT

**Date of Decision : 21-12-2021**

**Acts Referred:**

Constitution Of India, 1950 — Article 12, 311(2)

**Citation : (2021) 12 J&K CK 0031**

**Hon'ble Judges : Sanjay Dhar, J**

**Bench : Single Bench**

**Advocate : Ateeb Kanth, B. A. Zargar**

**Final Decision : Allowed**

## **Judgement**

Sanjay Dhar, J

1) Petitioner has challenged order No.KMCB/HO/1690/06-07 dated 01.11.2006 passed by the respondent Bank, whereby, while ordering reinstatement of the petitioner, it has been directed that he shall not be paid the salary for the period of suspension, he shall be reverted to the post of Cashier from which he was elevated to the post of Assistant Manager, additional increments and other monetary benefits granted to the petitioner at the time of promotion be recovered from him and he shall not be post at the cash receipt or payment counter.

2) It is the case of petitioner that he was appointed as Cashier-cum-Clerk in the respondent Bank on 27.07.1992, whereafter on the basis of his representations, pursuant to the decision and resolution of the Board of Directors of the respondent Bank, he was promoted to the post of Assistant Accountant (re-designated as Assistant Manager) in terms of order No.KMCB/HO/2248-54/04-05 dated 30.03.2005. On 15.04.2006, an order bearing No. KMCB/HO/1437-41/06-07 came to be issued by the Secretary of the respondent Bank whereby petitioner was placed under suspension with immediate effect till further

orders. On 27.05.2006, vide No. KMCB/HO/183-90/06-07, issued by the Secretary of the respondent Bank, a charge sheet was served upon the petitioner levelling certain charges and allegations against him and he was directed to file reply within a period of seven days. It is averred that petitioner responded to the said charge sheet in terms of letter dated 03.06.2006 and subsequently vide letter dated 22.06.2006, whereby he refuted all the charges levelled against him. On 18.07.2006,

a show cause notice bearing No. KMCB/HO/1394-95/06-07, came to be issued by the Secretary to the respondent Bank against the petitioner, whereby action was proposed to be taken against the petitioner and he was directed to file reply to the show cause notice within a period of seven days. Petitioner submits that he filed a reply dated 21.07.2006 to the said show cause notice. On 01.11.2006, the impugned order came to be issued by the respondent Bank.

3) In terms of the Service Rules of the respondent Bank, petitioner filed an appeal against the aforesaid impugned order on 28.11.2006 and subsequently on 25.01.2007. However, no action was taken by the respondent Bank on the said appeal(s) compelling the petitioner to file the instant writ petition.

4) Petitioner has challenged the impugned order on the grounds that as per the Service Rules applicable to the petitioner, the Secretary of the respondent Bank has no competence to pass the impugned order; that no charge sheet was served upon the petitioner nor any enquiry was conducted by the respondents against him before passing the impugned order; that the charges levelled against the petitioner are vague and, as such, the charge sheet itself is liable to be set aside; that the impugned order passed by the respondents is a result of malafides and colourable exercise of power on the part of respondents and that impugned order is not sustainable in law.

5) Respondents have contested the writ petition by filing a reply thereto. In their reply it has been submitted that the conduct of petitioner has not remained up to the mark and that the petitioner has been involved in many acts of omission and commission right from his initial appointment. It is contended that the petitioner has been involved in misappropriation of funds of the respondent Bank and has been suspended on several occasions. It is further averred that the petitioner has never discharged his duties to the satisfaction of his superiors and has tried to harass the respondents by filing several cases before the Court. It is contended that the petitioner indulged in defalcation of funds, as a result of which he was placed under suspension in terms of order dated 15.04.2006. According to the respondents, the charges levelled against the petitioner were found established beyond doubt, as such, he deserved a deterrent punishment but keeping in view his family condition, a lenient view in the matter was taken by the respondents. It is averred that representations of the petitioner were considered by the Board of Governors but the same were found devoid of any merit. It has been also contended that the writ petition is not maintainable against the respondents.

6) Heard and considered.

7) Although respondents have raised a preliminary objection with regard to maintainability of the writ petition yet they have not placed on record any material to show that the respondent Bank is not a State within the meaning of Article 12 of the Constitution of India. However, record produced by respondents reveals that District Development Commissioner, Baramulla, happens to be the Chief Executive Officer/Chairman of the respondent Bank whereas Registrar Cooperative Societies, J&K, happens to be the Appellate Authority. This clearly suggests that pervasive control over the respondent Bank vests with the officials/officers of the Government of Jammu and Kashmir. Therefore, it can safely be stated that the respondent Bank qualifies to be a State within the meaning of Article 12 of the Constitution. Thus, writ petition is maintainable against the respondent Bank.

8) Coming to the merits of the case, the primary grounds raised by the petitioner is that the charge sheet served upon him is vague and that no enquiry was held against him before passing the impugned order.

9) Before coming to the merits of these contentions, the allegations made in the charge sheet are required to be noticed. It would be apt to reproduce the relevant portion of the charge sheet as under:

"1- That you have issued a CDR bearing No.0014027 dated 10-6-2003 for Rs.2400/- in favour of one Ali Mohd Lone of Watergam Sopore, against which only Rs.240/- have been remitted to the bank vide cash receipt No.80 dated 10-6-2003.

2- That you were requested by a client of the bank namely Latief Ahmad Rather to stop the payment of his cheque No.150055 of Rs.40000/- through a written application and you had assured the party that the cheque will not be passed & despite your assurance the cheque was allowed to be encashed for reasons not known.

3- That you have failed to observe the proper procedure laid down by recording stop payment instructions issued by the clients which shows your carelessness and inefficiency.

4- That although the complainant Shri Latief Ahmad Rather withdrew his complaint after the settlement of his account with the party but the fact of your affording the party a chance for filing of complaint against the bank can't be ignored.

5- That during the examinations of A/C opening forms by Gen. Manager it has been observed that while opening accounts you have failed to comply with the procedure and the instructions issued regarding KYC norms.

6- That your have also misbehaved with the General Manager of the bank on his visit to the Iqbal Market branch which indicates your insubordination and

indiscipline."

10) From a perusal of the aforesaid charge sheet, it is clear that while the charges at serial Nos.1 to 5 are specific but the charge at serial No.6 is vague, inasmuch as it does not specify when and where the petitioner had misbehaved with the General Manager.

11) A perusal of the responses filed by petitioner to the aforesaid charge sheet reveals that he has clearly denied and refuted all the allegations made against him. After considering the responses filed by the petitioner, it seems that the respondents issued show cause notice dated 18.07.2006 to the petitioner asking him to show cause as to why Bank shall not take a stern action against him and consider his dismissal from the services of the Bank, which means that aforesaid notice proposed punishment of dismissal against the petitioner. Now a question arises as to whether respondent Bank could issue the notice of show cause proposing penalty against the petitioner and whether any enquiry was conducted prior to issuing the said notice. From a perusal of the record, it comes to the fore that neither any enquiry officer was appointed by the respondent Bank nor any enquiry was conducted by it before issuing the show cause notice for imposing penalty against the petitioner and before imposing the penalty upon him vide the impugned order.

12) Here it would be apt to refer to the relevant Service Rules applicable to the employees of the respondent Bank. Section 17 of the Service Rules provides for penalties. It reads as under:

"Section 17

Penalties

17.1 Notwithstanding anything contained in any other regulation and without prejudice to such action which an employee becomes liable under any other law or regulations for time being in force, any or all of the following penalties may be imposed on a member on the service of the bank for good and sufficient reasons.

a- Censor

b- With holding of increment.

c- Recovery from pay of such other amount as may be due to him for the whole or part of any pecuniary loss caused the bank due to negligence or breach of orders.

d- Fine and minor or major penalties.

e- Reduction to a lower category or grade.

f- Reduction in seniority.

g- Dismissal from service.

### 17.2 Explanation:

The following shall not constitute penalty within the meaning of this rule:

- a- Termination of service or revision to lower grade or post of an employee appointed or promoted on probation during the period of his probation.
- b- Discharge of an employee from service as a measure of retirement.
- c- Reversion of a employee promoted from a lower post to a higher post, to such lower post for want of vacancy.

### 17.3 Provision:

Provided that no penalty is imposed on an employee unless the charge has been communicated to him in writing and he is given a reasonable opportunity of being heard or the action proposed to be taken against him and his representation has been considered. In case of penalty under Cl.(e) (f) and (g) of preceding rule the authority competent to impose the penalty shall hold an enquiry to ascertain the correctness and the employee against whom the action is proposed shall be entitled to produce evidence and cross examine the witnesses and seek help from any employee of the bank to defend himself but shall not be entitled to engage a lawyer during the course of enquiry. "

13) From a perusal of the aforesaid provision, it becomes manifest that so far as penalties of reduction to a lower category or grade, reduction in seniority and dismissal from service are concerned, such penalties cannot be imposed upon an employee unless the charge has been communicated to him in writing and an enquiry to ascertain correctness of the charges has been held and the employee against whom action is proposed, has been given an opportunity to produce evidence and cross-examine and seek help from any employee of the Bank to defend himself. In the instant case, though the charge sheet has been served upon the petitioner, yet there is nothing on record to even remotely suggest that any enquiry has been conducted by the respondents before imposing the penalty of reversion of the petitioner from the rank of Assistant Manager to the rank of Cashier-cum-Clerk. In the absence of holding any enquiry against the petitioner, the question of granting him an opportunity to produce evidence or to cross-examine the witnesses also does not arise. Thus, respondent Bank has, while imposing penalty vide the impugned order upon the petitioner, observed the provisions contained in Section 17.3 of the Service rules applicable to the employees of the Bank in breach. It is not a case where petitioner had admitted the charges levelled against him but it is a case where he has specifically refuted each and every charge levelled against him by filing reply thereto. So it was incumbent upon the respondent Bank to appoint an enquiry officer and hold enquiry against the petitioner before imposing the penalty of reduction of his rank.

14) The Supreme Court in the case of Jagdish Prasad Saxena vs. State of Madhya Bharat, AIR 1961 SC 1070, has, while dealing with a case to which

Article 311(2) of the Constitution of India was applicable which affords a similar protection to employees of the Government as is being afforded by Section 17.3 of the Service Rules of the respondent Bank to its employees, observed that an employee is entitled to have a reasonable opportunity of meeting the charges framed against him.

15) Again, the Supreme Court in the case of *Surath Chandra Chakrabarty vs. State of West Bengal*, (1970) 3 SCC 548, while upholding the decree of the trial court, observed that when a person is denied a proper and reasonable opportunity of defending himself, the penalty imposed upon him cannot be sustained. Para 6 of the judgment is relevant to the context and the same is reproduced as under:

"6. Now in the present case each charge was so bare that it was not capable of being intelligently understood and was not sufficiently definite to furnish materials to the appellant to defend himself. It is precisely for this reason that Fundamental Rule 55 provides, as stated before, that the charge should be accompanied by a statement of allegations. The whole object of furnishing the statement of allegations is to give all the necessary particulars and details which would satisfy the requirement of giving a reasonable opportunity to put up defence. The appellant repeatedly and at every stage brought it to the notice of the authorities concerned that he had not been supplied the statement of allegations and that the charges were extremely vague and indefinite. In spite of all this no one cared to inform him of the facts, circumstances and particulars relevant to the charges. Even if the Enquiry Officer had made a report against him the appellant could have been given a further opportunity at the stage of the second show-cause notice to adduce any further evidence if he so desired after he had been given the necessary particulars and material in the form of a statement of allegations which had never been supplied to him before. This could undoubtedly be done in view of the provisions of Article 311(2) of the Constitution as they existed at the material time. The entire proceedings show a complete disregard of Fundamental Rule 55 insofar as it lays down in almost mandatory terms that the charges must be accompanied by a statement of allegations. We have no manner of doubt that the appellant was denied a proper and reasonable opportunity of defending himself by reason of the charges being altogether vague and indefinite and the statement of allegations containing the material facts and particulars not having been supplied to him. In this situation, for the above reason alone, the Trial Judge was fully justified in decreeing the suit."

16) A bare perusal of the afore-quoted observations of the Supreme Court clearly shows that each charge levelled against an employee has to be sufficiently definite to furnish material to an employee to defend himself and it is absolutely essential to supply whole material relied upon by an employer against its employee in the enquiry.

17) In the instant case, as already noted, one of the charges levelled against the

petitioner is vague as it does not contain the sufficient and definite particulars about the incidents of alleged misbehaviour by the petitioner. This must have handicapped the petitioner from filing his reply to the said charge. Not only this, even the enquiry has not been conducted against the petitioner and, as such, there is no question of giving an opportunity of presenting his case to the petitioner before the enquiry officer. The entire proceedings conducted by the respondents in the instant case show a complete disregard of Section 17.3 of the Service Rules applicable to the employees of respondent Bank. The impugned order, therefore, is not sustainable in law.

18) For the foregoing reasons, the writ petition is allowed and the impugned order passed by the respondents is set aside. Consequently, the petitioner is held entitled to all the benefits which will ensue to him. It shall, however, be open to the respondents to hold an enquiry against the petitioner in accordance with the Service Rules and thereafter take an appropriate decision in accordance with law.

19) Record be returned to the learned counsel for the respondents.