

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 10238/2009**

% **18th April, 2013**

SHRI VINOD KUMAR SHARMA Petitioner

Through: Mr. K. G. Mishra, Advocate.

VERSUS

GENERAL MANAGER PUNJAB NATIONAL BANK Respondent

Through: Mr. Rajat Arora, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes.**

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition is filed by the petitioner Sh. Vinod Kumar Sharma with a prayer that the impugned order dated 11.11.2005 and other related orders dated 2.1.2009 and 4.4.2009 be quashed and thereafter the petitioner for the period of suspension be paid full pay and allowances.

2. It is not in dispute that the respondent-bank filed a criminal complaint against the petitioner for stealing of a transformer/stabilizer. It is also not in dispute that vide judgment dated 12.5.2005 of the Metropolitan Magistrate, New Delhi, the petitioner was acquitted on the ground that prosecution has failed to prove its case against the accused beyond reasonable doubt.

3. Counsel for the respondent-bank also does not dispute that no departmental proceedings till date have at all been initiated against the petitioner and also presently there is no move to initiate any departmental proceedings against the petitioner.

4. Therefore, the position which emerges is that the petitioner has been acquitted in criminal case and no departmental proceedings have been initiated by the respondent with respect to alleged infraction by the petitioner. Learned counsel for the respondent however relies upon Clause 3(c) of the Memorandum of Settlement dated 10.4.2002 between the management and the employees of the bank and which according to the respondent entitles the respondent-bank to pay only suspension allowance during the period of suspension although the suspension order is thereafter not followed by disciplinary proceedings. In order to appreciate this contention, it is necessary to reproduce clauses 1 to 3 of the Memorandum of Settlement dated 10.4.2002 and the same read as under:-

“1. A person against whom disciplinary action is proposed or likely to be taken shall in the first instance be informed of the particulars of the charge against him and he shall have a proper opportunity to give his explanation as to such particulars. Final orders shall be passed after due consideration of all the relevant facts and circumstances. With this object in view the following shall apply.

2. By the expression “offence” shall be meant any offence involving moral turpitude for which an employee is liable to be conviction and sentence under any provision of Law.

3. (a) When in the opinion of the management an employee has committed an offence unless he be otherwise prosecuted, the bank may take steps to prosecute him or get him prosecuted and in such a case he may also be suspended.

(b) If he be convicted, he may be dismissed with effect from the date of his conviction or be given any lesser form of punishment as mentioned in Clause 6 below.

(c) If he be acquitted, it shall be open to the management to proceed against him under the provisions set out below in Clauses 11 and 12 infra relating to discharges. However, in the event of the management deciding after enquiry not to continue him in service, he shall be liable only for termination of service with three months' pay and allowances in lieu of notice. And he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full pay and allowances minus such subsistence allowance as he has drawn and to all other privileges for the period of suspension provided that if he be acquitted by being given the benefit of doubt he may be paid such portion of such pay and allowances as the management may deem proper, and the period of his absence shall not be treated as a period spent on duty unless the management so directs.

(d) If he prefers an appeal or revision application against his conviction and is acquitted, in case he had already been dealt with as above and he applies to the management for reconsideration of his case, the management shall review his case and may either reinstate him or proceed against him under the provisions set out below in Clauses 11 and 12 infra relating to discharge, and the provision set out above as to pay, allowances and the period of suspension will apply, the period up-to-date for which full pay and allowances have not been drawn being treated as one of suspension. In the event of the management deciding, after enquiry not to continue him in service the employee shall be liable only for termination with three months' pay and allowance in lieu of notice, as directed above."

5. It is contended by the counsel for the respondent-bank relying upon

the last line of clause 3(c) above that even if the employee is acquitted and no

departmental proceedings take place, yet, only suspension allowance has to be paid.

I am unable to agree with the argument as urged on behalf of the respondent-bank inasmuch as the last line of para 3(c) of the Memorandum dated 10.4.2002 has to be read in the context of all the three clauses 1 to 3. When all the three clauses are read together it shows that the same deal with the position when a person is charged with an offence by the bank and he is acquitted of the offence by the criminal court thereafter departmental proceedings are initiated. There cannot be any doubt to the fact that the last line of para 3(c) deals with the position emerging on and after the disciplinary proceedings are initiated and the last line cannot be read in abstraction to deal with a case as if it provided for the entitlement of the bank to suspend the employee and pay only the suspension allowance during the period of suspension although no departmental proceedings have been initiated against the employee. In fact, the last line of para 3(c) which is relied upon by the respondent-bank begins with the expression “And”, thus showing that it is in continuation of the earlier lines in the said para and which specifically provide the position on and after the departmental proceedings/disciplinary proceedings having been initiated against an employee.

6. So far as the leave record of the petitioner is concerned, counsel for the respondent-bank states that in fact bank has instructed him to file an affidavit

which is ready and which states that leave record of the petitioner is not traceable. If that be so the consequences in law will follow and therefore I need not deal with the prayer of the petitioner for direction to produce the leave record.

7. In view of the above, the writ petition has to succeed. The petitioner having been acquitted by the criminal court and no departmental proceedings have been initiated against the petitioner, the suspension order has to lapse *ab initio* with the effect that the petitioner will be entitled to the full pay and allowances during the period of his suspension and the bank will treat the suspension order void *ab initio* with all consequential benefits to the petitioner.

8. Writ petition is accordingly allowed and disposed of, leaving the parties to bear their own costs.

APRIL 18, 2013
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VALMIKI J. MEHTA, J.