

Court No. - 7

Case :- WRIT - A No. - 19760 of 2020

Petitioner :- Kumar Bhaskar Bhushan

Respondent :- State Bank Of India Thru.Deputy
G.M.Bandoadmin.Office Andors.

Counsel for Petitioner :- Raj Kumar Upadhyaya R.K.

Counsel for Respondent :- Alok Saxena

Hon'ble Abdul Moin,J.

1. Heard Shri Raj Kumar Upadhyay, learned counsel for the petitioner and Shri Alok Saxena, learned counsel for respondent-Bank.

2. Instant petition has been filed challenging the orders dated 21.01.2020 and 13.05.2020, copies of which are Annexure Nos. 1 & 2 to the petition respectively.

3. By means of order dated 21.01.2020, the petitioner has been punished with a minor penalty of withholding of one increment for a period of three years without cumulative effect.

4. Vide order dated 13.05.2020, the appeal filed by the petitioner has been rejected.

5. Brief facts of the case are that the petitioner was working as Branch Manager of the State Bank of India at Gorakhpur University, Gorakhpur. The petitioner wanted to avail certain leave which was due to him but he was unable to do so despite having submitted an application in this regard. On 06.07.2019, the petitioner, after handing over the keys of the Bank, proceeded on leave. Subsequent thereto, the petitioner has been issued with the charge memo dated 05.11.2019, a copy of which is Annexure No. 9 to the petition, indicating certain lapses on the part of the petitioner. The petitioner claims to have submitted a reply but the punishment order dated 21.01.2020 was passed against the petitioner whereby it was indicated that (a) the petitioner absented himself from his dues on 06.07.2019 without first

obtaining leave from the appropriate authority, (b) while absenting himself from his duties on 06.07.2019, he kept the Branch Keys in his custody and as a result the Branch could be opened at 12:30 p.m. thereby resulting into non-functioning of the Branch for 02 hours and 30 minutes, (c) he has placed his resignation letter on Social Media (WhatsApp group) on 06.07.2019 and did not submit the same through proper channel and (d) he raised several grievances against the Bank/Bank Officials in his resignation letter without first raising them to the Bank's appropriate authority.

6. The appeal filed by the petitioner against the said order was also rejected vide order impugned dated 13.05.2020 and hence this petition.

7. Learned counsel for the petitioner contends that a specific averment has been made in paragraph 6 of the petition that the petitioner had reached the Bank on 06.07.2019 and thereafter left the Bank after opening it which would be apparent from the fact that the first entry that has been made on the said date is at 09:39:36 a.m. by one Shri Dev Raj Thapa. It is also contended that Shri Verma, a substitute of the petitioner, only reported at around 12:55:20 in the afternoon and thus it would be apparent that the Bank itself was fully functional on 06.07.2019 in the morning hours itself.

8. So far as the petitioner having raised his grievance through his message/resignation on the social media, it is contended that the social media group is being operated by the Human Resource Manager himself and as such there is no illegality on the part of the petitioner in having posted his resignation on the WhatsApp group and thus the impugned order of punishment merits to be set aside.

9. Rebutting the same, the argument of Shri Alok Saxena, learned counsel for respondent-Bank, on the basis of averments contained in the counter affidavit, are that the Bank could only be opened on

06.07.2019 after the keys were obtained from the petitioner, whereby resulting in non-functioning of the Bank Branch for two hours and thirty minutes.

10. Placing reliance on the Circular dated 28.09.2018, a copy of which is Annexure No. CA-1 to the counter affidavit along with the Code of Conduct for Employees, Shri Alok Saxena, learned counsel argues that the said circular specifically prohibits posting on social media platforms viz. Facebook, Twitter, WhatsApp, etc. and which are not to be used for any adverse communication or endorsements on Bank related policies or procedures or for any grievances.

11. Shri Alok Saxena, learned counsel has also placed reliance on the letter dated 26.11.2019 sent by the petitioner himself, a copy of which is Annexure No. 10 to the petition, which would indicate that the petitioner has himself admitted that he did not go to the Bank on 06.07.2019 itself and thus it is contended that keeping in view the aforesaid facts, there is no illegality or infirmity in the orders impugned and the writ petition deserves to be dismissed.

12. Heard learned counsels for the parties and perused the records.

13. From perusal of order impugned dated 21.01.2020 it emerges that the petitioner had been issued a charge memo dated 05.11.2019 for having absented himself from duties from 06.07.2019 without first obtaining leave from the appropriate authority; having absented himself from his duties on 06.07.2019, he kept the Branch Keys in his custody and as a result the Branch could be opened at 12:30 p.m. thereby resulting in non-functioning of the Branch for 02 hours and 30 minutes; he posted his resignation letter on Social Media (WhatsApp group) on 06.07.2019 and did not submit the same through proper channel as per Bank's instructions and having raised several grievances against the Bank/Bank Officials in his resignation letter without first raising them to the Bank's appropriate authority.

14. The petitioner submitted his reply which was not found satisfactory and vide order impugned dated 21.01.2020, the petitioner was punished by imposition of minor penalty. The appeal filed by the petitioner was also rejected vide order dated 13.05.2020.

15. So far as the charge against the petitioner of having absented himself from his duties on 06.07.2019 and having kept the Branch Keys in his custody resulting in the Branch having opened at 12:30 p.m. resulting in non-functioning of the Branch for 02 hours and 30 minutes are concerned i.e. one of the four charges levelled against the petitioner, a specific averment has been made in paragraph 6 of the petition that the work of the Branch was started by the first log-in made by one Shri Dev Raj Thapa, clerk-cum-cash incharge at 09:39:36 a.m.. Incidentally, the said averment has not been specifically denied by the respondents in paragraph 9 of the counter affidavit in which the reply to paragraph 6 of the writ petition has been given and thus in the absence of specific denial it is to be deemed that one of the charges levelled against the petitioner of Bank functioning having been delayed on account on non-opening of Bank as the petitioner did not hand over the keys, falls to the ground.

16. Even though the other charges may have been proved against the petitioner but once the charge memo comprises of four charges of which one charge which has been proved of the four charges cannot be said to be legally justified keeping in view that no specific denial has been given by the respondents if the Bank functioning having started at 09:36:39 a.m.. The punishment order having been passed on the basis of four charges of which one charge is not sustainable consequently the punishment order merits to be quashed on this ground alone.

17. On the same analogy, the appellate order dated 13.05.2020 also merits to be set aside.

18. So far as the contention of the respondents that as the petitioner had himself admitted in his own letter dated 26.11.2019 that he had not gone to the Bank on 06.07.2019, the same may not detain the Court inasmuch as nothing precluded the respondents from rebutting the averments made in paragraph 6 of the writ petition of the Bank functioning having started in the morning hours itself. Thus, the said argument on behalf of the respondents is rejected.

19. So far as the other charges are concerned, the merits of the said charges have not been considered by this Court and are left open to be decided, if the petitioner is aggrieved by any other order that is passed in this regard.

20. Keeping in view the aforesaid discussion, the writ petition is **allowed**. The orders dated 21.01.2020 and 13.05.2020, copies of which are Annexure Nos. 1 & 2 to the petition respectively, are quashed. The matter is remanded to the Disciplinary Authority to pass a fresh order keeping in view the aforesaid discussion.

21. Let such order be passed within a period of eight weeks from the date of receipt of certified copy of the order.

Order Date :- 21.11.2023
Mohit Singh