

Neutral Citation No. - 2024:AHC-LKO:83093

RESERVED

Court No. - 11

Case :- WRIT - A No. - 2655 of 2024

Petitioner :- Devendra Singh

Respondent :- Executive Director Central Office Rbi Central Office
Mumbai And Others

Counsel for Petitioner :- Niteesh Kumar,Rajeev Narayan Pandey

Counsel for Respondent :- Pritish Kumar

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Sri Niteesh Kumar, learned counsel for the petitioner and Sri Pritish Kumar, learned counsel for the opposite parties.

2. By means of this petition the petitioner has prayed following relief :

"I. To issue a writ, order or direction in the nature of certiorari and thereby quashed the impugned order dated 04/03/2024 passed by opposite party no. 2 and order dated 05-12-2023 passed by opposite party no. 3, which is contained as annexure no. 4 and 5 to this writ petition, in the interest of justice.

II. To issue a writ, order or direction in the nature of mandamus directing the opposite parties to reinstate the petitioner on Class III post of Senior Assistant, with all consequential benefits, in the interest of justice."

3. By means of this petition the petitioner has assailed the order dated 5.12.2023 passed by the opposite party no. 3 imposing the punishment of demotion from Class III Post of Senior Assistant to Class IV of Senior Office Attendant and thereby fixed the salary by lowering three increments in the matured scale of Class IV. The petitioner has also assailed the order dated 4.3.2024 passed by the opposite party no. 2, the appellate authority, whereby the appeal of the petitioner has been rejected without appreciating the factual and legal matrix of the issue.

4. The brief facts of the case are that petitioner was working as Senior Assistant at Reserve Bank of India in Lucknow. Petitioner was appointed by Deputy General Manager to go as 'Potdar' on remittance to Central Bank of India Saharanpur on 30.11.2022. Petitioner on seeing irregularities, illegalities and negligence on the part of authorities of not complying the instructions issued by Reserve Bank of India regarding making arrangements for transferring the money from office of Reserve Bank of India, Lucknow to Central Bank of India Saharanpur, contacted Senior Authorities and made complaint of not arranging amenities required for securely transferring the remittance.

5. The authorities of Reserve Bank of India cancelled transferring the remittance and allegedly by making oral directions instructed the petitioner to give back the keys of locker (containing huge amount of money) ignoring the provisions of depositing the keys by issuing written order stating to have been passed by General Manager.

6. Although Station Deputy Officer (SDO), in view of the averments made in the charge sheet, passed the order, yet the same / written order was illegally torn by the Secretariat of Regional Director and the same is evident from Statement of Smt. Namrata Ola, Assistant Manager who appeared as a witness of bank. Further, authorities of Reserve Bank of India including Regional Director Reserve Bank of India did not pass any written order directing the petitioner to return back the keys.

7. Despite the fact there is no evidence in the form of any written order directing the petitioner to return the keys and accordingly no misconduct of insubordination alleged to have been committed by the petitioner, however, competent authority illegally issued charge-sheet dated 23-01-2023 for violation of Rule 32 and 34 of Reserve Bank of India Staff resolution.

8. It is settled proposition of law laid down by the Hon'ble Apex Court in ***State of Rajasthan & Ors. Versus Heem Singh (2020 LawSuit (SC) 669*** and ***Moni Shankar Versus Union of India ((2008) 3 Supreme Court Cases 484*** that the courts exercising the power of judicial review are

entitled to consider as to whether while inferring commission of misconduct on part of delinquent Officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles.

9. If no evidence is available on record as no written order directing the petitioner to return back the keys in the present case then Hon'ble courts have got jurisdiction to interfere in the inquiry proceedings and punishment orders, based on the Doctrine of Unreasonableness and Doctrine of Proportionality.

10. It is significant to mention here that procedure of conducting an inquiry is prescribed under Master Circular on Staff Discipline (Annexure no. 29) wherein the detailed guidelines for the Competent Authority is provided under the Master Circular on Staff Discipline.

11. On perusal of the para 2 (para IV and V) of the guidelines it is evident that penalty should be proportionate to the gravity of misconduct proved. Moreover, major penalty can only be imposed for repeated misconduct and the petitioner may only liable to be punished for reprimand for alleged act of in subordination. However, he is not admitting the allegations as he has not committed any misconduct.

12. It is the settled proposition of law laid down by the Hon'ble Apex court in ***Vijay Singh Versus State of U.P. and Others (2012) 5 Supreme Court Cases 242*** that disciplinary authority is not permitted to ignore the statutory rules under which punishment is to be imposed. The disciplinary Authority is bound to give strict adherence to the said rules.

13. Pertinently, Deputy General Manager concluded the preliminary enquiry and submitted the report without having been authorized on 01-12-2022 and two preliminary enquiries were conducted against statutory rules without giving any opportunity of hearing to the petitioner.

14. Despite the fact the enquiry officer was appointed on 7.2.2023 for conducting the enquiry against the petitioner, however, the enquiry was belatedly initiated on 28-02-2023 i.e. after 21 days from the date of appointment of enquiry officer, vide letter dated 28-02- 2023, and thereby fixed date, time and place for the initiation of the enquiry. Moreover, provisions of the Master Circular on Staff Discipline mentioned in Appendix-A (Expeditious completion of Disciplinary Proceedings-Modified Action Plan) and in Para 15.1.f prescribe that authorities concerned shall have to conclude the proceedings (initiation and concluding the enquiry and passing of the final order) within 180 days or on the 180th day from the date of issuance of charge-sheet, however, competent authority deliberately did not pass the punishment order after submitting of the enquiry report on 03-05-2023 (endorsed by competent authority on 15-05-2023 before the date of signing of the minutes of the enquiry on 23-05-2023) within time and accordingly petitioner was compelled to face the suspension of four months more, because of not passing of final order within time by the competent authority.

15. Appellate Authority made the endorsement on the report dated 01-12-2022 submitted by Deputy General Manager and thereby enhanced the gravity of alleged misconduct, accordingly petitioner requested to call him (regional director) as a witness in the inquiry proceedings as firstly Regional Director torn the written order and secondly Regional Director / Appellate Authority himself illegally made the endorsement on report dated 01-12-2022 without there being any authority, however, inquiry officer illegally refused to call Appellate Authority. Significantly appellate authority shall not entertain the appeal filed by the petitioner as appellate authority himself was the witness of the alleged incident and involved in tearing the written order, however appellate authority being prejudiced against the petitioner, illegally affirmed the punishment order dated 05-12-2023 in violation of the principles of natural justice.

16. Therefore, the learned counsel for the petitioner has prayed that the punishment order / appellate order may be set aside.

17. Per contra, Sri Prithish Kumar, learned counsel for the opposite party has submitted that the orders passed by the competent authority and appellate authority are well speaking orders and duly considered the case of the petitioner while imposing the penalty. Principles of natural justice were adhered to every step providing ample time and opportunity to the petitioner to defend himself at every stage and as such, no case of interference is made out by the petitioner.

18. He has further submitted that competent Authority took into account the grave nature of misconduct committed by the petitioner involving public money, constant refusal to obey orders and instructions given by superiors resulting into police being called to intervene, thus, putting the RBI's reputation at risk. Unprofessional and sarcastic tones/remarks used by the petitioner during disciplinary proceedings. Written orders were provided to the Petitioner to return the keys and documents however the same were refused to be accepted by the Petitioner. The action of the authority imposing penalty is justified and proportionate with the offence committed by the Petitioner. Appellate Authority took into account the entire episode with respect to indiscipline of the Petitioner on remittance duty. Ample opportunity of hearing was provided to the Petitioner to present his defence. The Appellate Authority have justified that the petitioner was guilty of misconduct and the punishment imposed is in accordance with the applicable Regulations of RBI (Staff) Regulations.

19. Sri Prithish Kumar has placed reliance on the dictum of Hon'ble Apex Court in ***Jiwan Mal Kochar v. Union of India, reported as AIR 1983 SC 1102, para 11,12*** wherein the Hon'ble Apex Court upheld that no interference is required under Article 226 of the Constitution of India if the petitioner could not place any matter on record to prove that the decision of inquiry committee was influenced with bias similarly in the present case the Competent Authority and Appellate Authority imposed the punishment after taking into account the fact that grave misconduct was committed by the Petitioner inasmuch as the same related to core function of RBI and the Petitioner, being the potdar, was in possession of the keys of the treasure and put treasure worth ₹19.20 crores at risk. Though the Petitioner

attempted to misuse his position as the President of the local Class III Workers Association, the same was not taken into account while deciding the punishment by the competent authority.

20. Sri Kumar has submitted that Hon'ble Apex court in ***State Bank of India vs. Narendra Kumar Pandey***, reported as ***AIR 2013 SC 904*** and ***Union of India vs. P. Gunasekaran***, reported as ***AIR 2015 SC 545***, upheld that findings of the disciplinary authority cannot be interfered by the Hon'ble High Court under Article 226 of the Constitution of India unless the same is perverse, without any material on record and not to go into proportionality of punishment unless it shocks the conscience of the Court. No such case is made out by the petitioner.

21. Sri Kumar has submitted that the Reserve Bank of India (Staff), Regulations shall prevail over Master Circular on Staff Discipline of RBI. That Master Circular on Staff Discipline is only in the nature of administrative instructions. The RBI (Staff) Regulations, 1948 have a statutory flavour and binding on all full time employees of RBI. The staff of RBI is governed by the RBI (Staff) Regulations, 1948. The Staff Regulations are formulated and amended from time to time by the Central Board of the Bank, which derives its statutory power from Section 7(2) of the RBI Act, 1934. Chapter IV of the aforesaid Staff Regulations covers Conduct, Discipline and Appeals by staff members. It is under this Chapter, the misconduct by the petitioner was established i.e. violation of Regulations 32 and 34. Further, the penalties to be levied on the staff members for misconduct are enumerated under Regulation 47(1) of RBI Staff Regulations. RBI Staff Regulations do not provide for distinction between penalties (Major/ Minor), and neither do they place any conditions on the competent authority to impose the penalties other than those listed above.

22. That the quantum of punishment imposed based on severity of the misconduct can be decided by the competent authority on case to case basis. There is no statutory restriction prescribed in the Bank's Staff Regulations on the matter of imposition of penalty and the Competent Authority has to

independently apply his mind and make a decision based on the merits of each individual case.

23. The Hon'ble Apex Court in *Union of India v. Const. Sunil Kumar*, reported as *AIR 2023 SC 554* and *Union of India v. Managobinda Samantaray* reported as *2022 INSC 231* have held that the punishment imposed by Disciplinary Authority can be interfered with only if it is 'strikingly disproportionate', which is absent in present case since the punishment imposed is not 'strikingly disproportionate'.

24. In the case of *Union of India v. Const. Sunil Kumar*, reported as *AIR 2023 SC 554, para 6* the Hon'ble Supreme Court also held that the misconduct of misbehaving with the superior officers and of insubordination can be said to be very serious misconduct and cannot be tolerated in a disciplined force like CRPF, similarly in the present case, the act of insubordination by the Petitioner and misconduct with respect to remittance duty, a core function of RBI amounts to be an act of very serious misconduct as such, the punishment imposed is not disproportionate.

25. On the basis of above arguments and citations the learned counsel for the opposite party has submitted that the present petition may be dismissed.

26. Sri Niteesh Kumar, learned counsel for the opposite party, in its rejoinder reply has reiterated his earlier arguments and further added that the Master Circular on Staff Discipline are merely administrative guidelines to the Competent Authorities issued by the Discipline Division, Human Resource Management Department, Mumbai, addressed to Regional Directors, among other heads of the offices across the country. The Master Circular is issued by an officer of the Bank of the rank of General Manager and as such, are general guidelines for the Competent Authorities for conduct of discipline proceedings. The Master Circular lists out various court cases and judgments, discipline proceedings across various offices of the Bank, and draws upon them to formulate guidelines to ensure that the interests of the Bank are secured in the Disciplinary Process. It is noteworthy to mention that all disciplinary cases are reported to Discipline

Division, Central Office for record-keeping and analysis and the Discipline Division uses this information among other relevant factors to issue relevant guidelines to the Competent Authorities across the Bank's offices.

27. As per Nitesh Kumar, the Staff Regulations do not provide for distinction between penalties (major / minor) and master circular on staff discipline is mandatory to be followed in order to impose penalty based on misconduct as Staff Regulations do not prescribe any misconduct, therefore, the master circular on Staff Regulations be mandatory forwarded.

28. Having heard learned counsel for the parties and having perused the material available on record this is an admitted case that before issuing the charge-sheet in the present issue the entire service record of the present applicant was unblemished as no punishment was awarded to him, therefore, for all practical purposes it was the first incident wherein the charge-sheet was given to the applicant.

29. The charge-sheet was issued on 23.1.2023 in respect of his non-returning of the keys and documents related to the fresh remittance of Central Bank of India (C.B.I.), Saharanpur scheduled on 30.11.2022 despite orders and directions by the concerned officers resulting in the call to the police for obtaining, therefore, the departmental inquiry initiated on the charge that the petitioner was negligent towards the discharge of his duties and he did not follow the order / direction of the authority.

30. The statement of learned counsel for the petitioner that the petitioner was not given any written order to hand over the keys etc., therefore, he could not hand over the keys and was asking for a written order, could not be disputed by means of filing counter affidavit as no written order to that effect has been enclosed with the counter affidavit. Further, by means of averments from para 35 to 40 of the writ petition the petitioner reproduced the relevant extract of the examination and cross-examination of the witnesses to convince that no written order was given to the petitioner and one paper which was in the hand of senior officer who was called as "R.D.

Sir" had torned one piece of paper without giving a copy thereof to the petitioner.

31. Since the issue in question was involving the huge cash which was being transferred from R.B.I. to another Bank so as an abundant precaution the petitioner could have asked for the written order so as to discharge his responsibility properly.

32. Even if the charge is taken on its face value then the charge in question may be of insubordination and the charge being the first case in the entire career, therefore, as per Appendix -K (misconduct-wise Penalties- Indicative List) (Annexure no. 29) the petitioner could have been awarded minor punishment of Reprimand.

33. In any case the charge so levelled against the petitioner, he could have not awarded the major punishment which is impugned herein. Sub-para IV and V of para 2 of the Appendix-K are worth to be produced herein :

"(IV) Penalty should be proportionate to the gravity of misconduct proved and the decision of CA in each case would be absolute.

(V) The number of times different misconducts are committed by an employee should be taken into consideration and major penalty may be imposed for repeat misconduct."

34. In the light of what has been provided in the aforesaid Appendix-K the impugned punishment awarded to the petitioner is disproportionate as the gravity of the misconduct does not commensurate with the punishment awarded.

35. Notably, the appellate authority was the main authority directing for initiating the departmental enquiry against the petitioner making endorsement on the report dated 1.12.2022 enhancing the gravity of the allegation, then the appeal of the petitioner was rejected by the same authority being appellate authority which is, prima facie, violative of principle of natural justice i.e. "*nemo judex in causa sua*" which means, no

one can be judge of his own cause. The aforesaid fact alone makes the appellate order nullity in the eyes of law.

36. Normally, the constitutional courts do not interfere the punishment order on the point of quantum of punishment but it is also trite that such punishment can be interfered if it is strikingly disproportionate. In the present case, for the reiteration sake, the petitioner has allegedly not returned the keys and documents relating to fresh remittance to Central Bank of India despite the orders and directions of the concerned officers but no written order to that effect has been given to the petitioner and even if oral direction to that effect was given to the petitioner by the superior authority he could have asked the written order keeping in a view such remittance was having huge cash. As an abundant precaution the aforesaid demand of the applicant was not unwarranted. The prima-facie charge against the present petitioner was insubordination by not following oral directions of the authority concerned, in that charge too, awarding him major punishment reverting / demoting him from Class III post to Class IV post fixing his salary by lowering three increments in a matured scale of Class IV at the fag end of his retirement is strikingly disproportionate, keeping in a view his entire service record has been unblemished as no punishment of any kind whatsoever has been awarded to him by now.

37. However, in the present case it appears that the present applicant has not disobeyed any order of the competent authority, rather placed his bonafide grievance / request before the competent authority for seeking written order to deposit the keys etc. He was charge-sheeted on such charge and during examination and cross-examination of the witness he was able to prove his bonafide, then he should have not been awarded any punishment, be it minor or simple reprimand. The aforesaid act of taking abundant precaution of the present petitioner may not be termed as misconduct inasmuch as the term misconduct is altogether different from any bonafide conduct not following the oral direction of the authority in the interest of the institution.

38. Accordingly, writ petition is ***allowed***.

11.

39. The impugned orders dated 4.3.2024 passed by opposite party no. 2 and order dated 5.12.2023 passed by the opposite party no. 3 are hereby set aside / quashed.

40. The petitioner shall be reinstated on Class III post of Senior Assistant with all consequential benefits.

41. No order as to costs.

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[Rajesh Singh Chauhan, J.]

Order Date :- 11.12.2024

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