

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-4641-1995 (O&M)
Date of Decision : 08.07.2015**

Shish Ram

..... Petitioner

versus

Haryana Kshstriya Gramin Bank & others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Raman B.Garg, Advocate
for the petitioner.

Mr. G.S.Bajwa, Advocate
for the respondents.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (ORAL)

CM No.4894-2015

For the reasons recorded, the application is allowed.

Annexures P-13 to P-17 are taken on record.

CWP No.4641-1995

By this writ petition the petitioner has challenged the orders dated 06/13.03.1995 and 15.07.1996 whereby he has been removed from service.

Brief facts of the case are that the petitioner joined as Clerk in Haryana Kshstriya Gramin Bank, Bhiwani (for short '*the Bank*') in the year 1979. On 11.10.1985 the petitioner was officiating as the

Manager of the Bank. The allegation was made by one Shri Suresh Kumar that he had deposited Rs.500/- in his TL account No.357/84 R.A.L.L. and the petitioner had duly issued him a receipt but it later on transpired that the amount was not credited into his account. The petitioner was served with a charge-sheet on 11.10.1989 alleging that the petitioner had deliberately destroyed/caused to be destroyed the original pay-in-slip which was filled-in by Sh.Suresh Kumar and had mis-utilized/mis-appropriated the amount. In his reply the petitioner denied the entire transaction. He denied that Sh.Suresh Kumar had come to the bank that day or he had deposited an amount of Rs.500/- or that the petitioner had issued any receipt to him. On this a regular inquiry was ordered. Interestingly, in the regular inquiry the complainant did not appear as a witness. Further even the original receipt stated to have been issued by the petitioner was not placed on record and only a photostat copy said to be attested by the Head Master of the Govt. School, Kharkari was produced. However even that person did not appear before the Inquiry Officer. Ultimately the Inquiry officer held the petitioner to be guilty only on the basis of the photocopy of the receipt holding that it was issued by the petitioner. The sum and substance of the line of the attack of the petitioner is that he had been held guilty even without the testimony of the complainant and even without production of the original document.

Learned counsel for the respondents on the other hand has sought to argue that there were other instances also where the

petitioner had similarly committed illegalities with bank funds and once he had lost the confidence of the management and keeping in mind the fiduciary nature of the job, the order is justified. Learned counsel for the petitioner has countered by arguing that in the inquiry report the inquiry officer has referred to another transaction which took place on 16.10.1985 but neither was there any allegation made with regard to that transaction nor did it form a part of the chargesheet. To this the learned counsel for the respondents has sought to argue that once that material was before the Inquiry officer the inquiry officer could well consider it.

I am afraid this argument is far fetched. Before a person can be held guilty of any charge, the charge has to be put to him so that he can respond thereto. In the circumstances, this argument of learned counsel for the respondents is rejected.

Coming back to the issue of the charge-sheet actually issued against the petitioner, this Court is well aware that judicial review is only with regard to the process and not with regard to the actual finding but in view of the allegations levelled by the respondents it would be highly improper not to touch upon the merits. Consequently, it has to be held that once neither the complainant nor the original receipt was produced and rather even the person who had purportedly attested the true copy did not appear there was no material before the Inquiry officer to hold the petitioner guilty.

It may also be mentioned that this specific ground had been taken in an appeal but the appellate authority also glossed over it by mentioning as follows :-

- *“That the charges levelled against Shri Shish Ram are not false which has subsequently been proved on the basis of various documents/oral evidence produced during enquiry proceedings.*
- *That the photo copy of the counterfoil of the pay-in-slip dated 11.10.1985 duly attested by the Head Master, Govt. High School, Kharkhari was produced during the enquiry proceedings.*
- *That documents produced by the presenting officer are trust worthy and can be relied upon and are admissible in the evidence.*
- *That the charges have been proved as detailed in the charge sheet dated 11/18.10.1989 on the basis of documentary/oral evidence adduced and produced during the course of enquiry proceedings.”*

In the circumstances the order removing the petitioner and the order dismissing his appeal both have to be set aside.

Learned counsel for the petitioner further prays that once this Court has decided to set aside the impugned orders he should be re-instated with all consequential benefits. On the other hand the learned counsel for the respondents states that the petitioner having not worked for almost 20 years can not be granted all consequential benefits.

There can be no formula in such a case to balance the equities where the matter has been delayed for two decades. No doubt in normal circumstances the petitioner would have been entitled to be reinstated with all consequential benefits but it cannot be lost sight of that he has not worked for more than 20 years now.

In the circumstances, even while allowing the writ petition it is directed that the petitioner would be entitled to all consequential benefits (including promotion etc.). The impugned orders are set aside. However the monetary part of the consequential benefits which have to be now released to the petitioner would be reduced by 50%. That is to say that the petitioner would be entitled to only 50% of the back-wages. The respondents are directed to reinstate the petitioner and consider him for all consequential benefits. The back wages would be paid to him within a period of three months from the date of receipt of a certified copy of this order, failing which, the petitioner would be entitled to claim the same with interest @ 8% per annum from the date of his termination of services till the payment/s.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

08.07.2015*Pooja Sharma-I***(AJAY TEWARI)
JUDGE**