

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

CWP No.15001 of 2008 (O&M)

Date of decision: July , 2015

Sh. Purushotam Lal Saini

...Petitioner

Versus

Central Bank of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.Yogesh Jain, Advocate for the petitioner.

Mr.H.C. Gupta, Advocate for the respondents-Bank.

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HARINDER SINGH SIDHU, J.

This petition has been filed praying for quashing of order dated 02.06.2007 (Annexure P-9) whereby the petitioner has been dismissed from service. It is also prayed that order dated 12.02.2008 (Annexure P-11), whereby the appeal of the petitioner thereagainst has been dismissed be also quashed.

The petitioner joined the service of respondent-Bank in the Clerical Cadre on 28.02.1973 and remained posted at various Branches. He was promoted to JMGS-I on 18.12.1994 and further promoted to MMGS-II on 02.06.2004. Consequent upon his promotion as MMGS-II, he was posted as Branch Manager at Branch Office

Chamba.

On 10.06.2006, he was served with the memo and asked to submit explanation with respect to alleged irregularities committed in four accounts mentioned in the said memo. He was placed under suspension vide order dated 21.07.2006. He submitted his reply to the memo dated 10.06.2006. He was later served with a charge-sheet vide memo dated 09.09.2006, which also contained the article of charges and Statement of Imputation of Misconduct in support of the article of charges (Annexure P-3). The respondent-management later issued a corrigendum to the charge-sheet vide memo dated 28.10.2006 and 02.11.2006. Sh.Virender Walia and Sh.G.S. Chauhan were appointed as Inquiring Authority and Presenting Officer respectively.

The following seven charges were inquired into:

“Charge No. 1.

Mr. Saini enhanced CC limit in a/c M/s Gokul Milk Products from Rs. 3.50 lac to Rs. 7.00 lac against the laid down norms whereas total credit Summations in the account for the year 2004-05 were to the tune of Rs. 2.26 lac. He single handedly processed the proposal even though other staff/officer were also present in the branch. He also filed in all the vouchers/cheques and got issued drafts to the debit of said account himself with some ill-conceived motive. He also credited three cheques to the said account issued by

his son Mr Vinay Kumar just to bring down the balance.

Mr. Saini sanctioned a term loan of Rs. 50,0000/- to Mr. Ajitab Soran. In this loan account on 11.11.05 a banker cheque of Rs. 28655/- was issued in favour of M/s Vinay Kumar & Company Chamba, stated to be in regard to goods supplied to Mr. Ajitab Soran. Incidentally, Prop. of M/s Vinay Kumar Co. is the son of Mr. P.L. Saini.

Charge No.2:

Mr. Saini sanctioned a term loan for purchase of second hand Tata 407 Truck to M/s Ala Ditta and Kasim which truck was sold by his son Sh. Vinay Kumar to utter violation to bank's prescribed norms just to help his son.

Charge No. 3:

Mr. Saini sanctioned a term of Rs. 2.00 lacs to a contractor Yadav Nandan against the laid down norms of the bank with some ulterior motive and without ensuring the end use of the same.

Charge No.4:

Mr. Saini sanctioned a loan to M/s Shiva Enterprises against the laid down norms of the bank.

Charge of No. 5

Mr. Saini sanctioned a term loan to M/s Avondale Resorts Dalhousie (46 KM from Chamba) for Rs. 15.00 Lacs against their request for Rs. 10.00 lacs without ensuring creation of 2nd charge on the property already financed by H P State Co-op bank thereby acting in violation of the Lending Policy of the bank and putting the Bank's interest in jeopardy.

Charge N. 6

Mr Saini on 9.11.05 sanctioned a Housing Loan of Rs. 50000/- to Smt. Ratni Devi D/o Sh. Shree Dhar, who happens to be sister of Smt. Karmi Devi, PTSK of Branch and violated the provisions of Clause No. 7.1.5 of Loan Policy.

Charge No. 7

Mr. Saini conducted both pre and post inspections in most

of the accounts (Gokul Milk Products, Ala Ditta and Kasim, Yadav Nandan, Shiva Enterprises & Avondale Resorts) even though other officers were present in the branch with some malafide intentions thereby putting the Bank's finance/interest at stake.”

The petitioner participated in the inquiry proceedings and Inquiry Officer submitted his report on 10.04.2007 and all the seven charges against the petitioner were held proved. The petitioner made his submissions against the findings of the Inquiry Officer to the Disciplinary Authority, which after considering the same passed the order dated 2.6.2007 (Annexure P-9). The Disciplinary Authority agreed with the Inquiry Officer and held charges No.1 to 5 as proved. Petitioner was however exonerated of charge No.6. A separate punishment was awarded qua each charge. Charge No.7 was held to have been incorporated in the earlier charges and hence, no separate punishment was awarded in respect thereof.

The consolidated punishment, which is as under, was imposed:

“Dismissal which shall be a disqualification for further employment” under clause 4(j) of Central Bank of India Officer Employees (D & A) Regulations, 1976.”

The petitioner filed the statutory appeal dated 23.7.2007 (Annexure P-10) in terms of Regulation 17 of Central Bank of India

Officers Employees (Discipline and Appeals) Regulations, 1976 (for short 'the Regulations'). In the said appeal, the petitioner contended, inter alia; that the order of Disciplinary Authority is non speaking and not a reasoned order; that the Disciplinary Authority while passing the order has taken into consideration the past record of the petitioner without putting him to notice; that the punishment of dismissal of service is harsh and disproportionate to the charges and Disciplinary Authority has not taken note of the fact that the petitioner had rendered 34 years regular service as on the date of passing of order of punishment having joined on 28.02.1973 and he was due to retire on attaining the age of superannuation in July, 2008. The Appellate Authority vide order dated 12.02.2008 dismissed the appeal as being without merit and confirmed the charge-wise as well as consolidated punishment imposed by the Disciplinary Authority.

It is these two orders of the Disciplinary Authority and the Appellate Authority that have been impugned in this writ petition.

Learned counsel for the appellant has primarily stressed that while passing the order of dismissal, the past record has been taken into consideration without putting him to notice that while imposing the punishment the past record would be taken into

consideration. To substantiate this, he has drawn attention to the order of Disciplinary Authority and quoted the observations made by the Disciplinary Authority while imposing the punishment in respect of each charge, which are as under:

“Charge No.1: I have also examined the past record of the CSO. Keeping in view the gravity of the charge proved and the past record of the CSO, he is awarded the following punishment....”

Charge No.2: Keeping in view the gravity of the charge proved and the past record of CSO, he is awarded the following punishment....”

Charge No.3: Keeping in view the gravity of the charge proved and the past record of the CSO, he is awarded the following punishment....”

Charge No. 4: Keeping in view the gravity of the charge proved and the past record of the CSO, he is awarded the following punishment....”

Charge No. 5: Keeping in view the gravity of the charge proved and the past record of the CSO, he is awarded the following punishment....”

Learned counsel submits that punishment of stoppage of two increments was imposed upon him in the year 2002. Thereafter, the petitioner was promoted to MMGS-II in June, 2004, despite the above punishment. Consequently, the said punishment is deemed to have been washed away with the promotion of the petitioner to the next higher cadre, which promotion was on the criteria of merit. He consequently submits that the Disciplinary Authority could not have

taken into account the past service record of the petitioner while imposing the punishment.

In the written statement filed on behalf of the respondents, it has been denied that the past record has been taken into consideration. It has been stated that it is wrong that performance of the petitioner was good and he rendered services to the utmost satisfaction of the Bank. Referring to the past conduct of the petitioner, it has been stated that he joined in the Clerical Cadre on 28.02.1973 and was promoted in the Officer cadre and posted at Fazilka as Chief Cashier on 17.01.1985. On 17.12.1985, the petitioner was charge-sheeted for the lapses in the advances and the Bank had suffered losses and after due process the petitioner was punished on 20.09.1985 and reverted to clerical cadre. On 19.12.1994, the petitioner was again promoted on account of State Service Seniority and again he was charge-sheeted on 7.3.1996 for committing lapses while working as Head Cashier, posted at Palasur Branch and after due process he was punished by reduction of pay by one stage in the time scale. On 5.2.2001, again the petitioner committed lapses while posted at Sri Nagar (J&K) and was punished on 18.9.2002 by reduction of pay of two stages. It is stated that

inspite of all these, the Bank has not taken into account his earlier punishment while issuing charge sheet on 9.9.2006 which ended into his dismissal from service after adopting due process of departmental enquiry and affording opportunities to the petitioner for defending himself.

Notwithstanding the denial in the written statement, the extracts from the order of the disciplinary authority which have been reproduced above, make it clear that the past conduct of the petitioner has been taken into consideration by the Disciplinary Authority while imposing the punishment. Now, the question is as to what is the impact thereof on the order of punishment.

The question has been considered by the Hon'ble Supreme Court a number of times. In one of the earlier cases, a Constitution Bench of the Hon'ble Supreme Court in **State of Mysore v.K. Manche Gowda, (1964) 4 SCR 540** held that if the previous record or previous punishment is to be taken into consideration for imposing penalty, the employee should be informed about it. It was observed as under:

7. Under Article 311(2) of the Constitution, as interpreted by this Court, a government servant must have a reasonable opportunity not only to prove that he is not

guilty of the charges levelled against him, but also to establish that the punishment proposed to be imposed is either not called for or excessive. The said opportunity is to be a reasonable opportunity and, therefore, it is necessary that the government servant must be told of the grounds on which it is proposed to take such action: see the decision of this Court in the State of Assam v. Bimal Kumar Pandit. If the grounds are not given in the notice, it would be well nigh impossible for him to predicate what is operating on the mind of the authority concerned in proposing a particular punishment: he would not be in a position to explain why he does not deserve any punishment at all or that the punishment proposed is excessive. If the proposed punishment was mainly based upon the previous record of a government servant and that was not disclosed in the notice, it would mean that the main reason for the proposed punishment was withheld from the knowledge of the government servant. It would be no answer to suggest that every government servant must have had knowledge of the fact that his past record would necessarily be taken into consideration by the Government in inflicting punishment on him; nor would it be an adequate answer to say that he knew as a matter of fact that the earlier punishments were imposed on him or that he knew of his past record. This contention misses the real point, namely, that what the government servant is entitled to is not the knowledge of certain facts but the fact that those facts will be taken into consideration by the Government in inflicting punishment on him. It is not possible for him to know what period of his past record or what acts or omissions of his in a particular period would be considered. If that fact was brought to his notice, he might explain that he had no knowledge of the remarks of his superior officers, that he had adequate explanation to offer for the alleged remarks or that his conduct subsequent to the remarks had been exemplary or at any rate approved by the superior officers. Even if the authority concerned took into consideration only the facts for which he was punished, it would be open to him to put forward

before the said authority many mitigating circumstances or some other explanation why those punishments were given to him or that subsequent to the punishments he had served to the satisfaction of the authorities concerned till the time of the present enquiry. He may have many other explanations. The point is not whether his explanation would be acceptable, but whether he has been given an opportunity to give his explanation. We cannot accept the doctrine of “presumptive knowledge” or that of “purposeless enquiry”, as their acceptance will be subversive of the principle of “reasonable opportunity”. We, therefore, hold that it is incumbent upon the authority to give the government servant at the second stage reasonable opportunity to show-cause against the proposed punishment and if the proposed punishment is also based on his previous punishments or his previous bad record, this should be included in the second notice so that he may be able to give an explanation.”

Affirming this principle that past conduct of an employee should not generally be taken into account to substantiate the quantum of punishment without bringing it to the notice of the delinquent employee, the Hon'ble Supreme Court in **Mohd. Yunus Khan v. State of U.P.**, (2010) 10 SCC 539, observed as under :

“34. The courts below and the statutory authorities failed to appreciate that if the disciplinary authority wants to consider the past conduct of the employee in imposing a punishment, the delinquent is entitled to notice thereof and generally the charge-sheet should contain such an article or at least he should be informed of the same at the stage of the show-cause notice, before imposing the punishment.

35. This Court in Union of India v. Bishamber Das Dogra considered the earlier judgments of this Court in State of

Assam v. Bimal Kumar Pandit, India Marine Service (P) Ltd. v. Workmen, State of Mysore v. K. Manche Gowda, Colour-Chem Ltd. v. A.L. Alaspurkar, DG, RPF v. Sai Babu, Bharat Forge Co. Ltd. v. Uttam Manohar Nakate and Govt. of A.P. v. Mohd. Taher Ali and came to the conclusion that it is desirable that the delinquent employee be informed by the disciplinary authority that his past conduct could be taken into consideration while imposing the punishment. However, in case of misconduct of a grave nature, even in the absence of statutory rules, the authority may take into consideration the indisputable past conduct/service record of the delinquent for “adding the weight to the decision of imposing the punishment if the fact of the case so required”.

The same position has again been reiterated by the Hon'ble Supreme Court in another recent case **Indu Bhushan Dwivedi v. State of Jharkhand, (2010) 11 SCC 278**, as under:

19. We shall first deal with the question whether consideration of the past adverse record of the appellant by the High Court had the effect of vitiating the ultimate order passed by the State Government. An exactly similar question was considered and answered in the affirmative by the Constitution Bench in State of Mysore v. K. Manche Gowda. The facts of that case were that while the respondent was holding the post of an Assistant to the Additional Development Commissioner, Planning, Bangalore, the Government of Mysore appointed Shri G.V.K. Rao (Additional Development Commissioner) to conduct a departmental enquiry against him in respect of the false claims for allowances and fabrication of vouchers.

20. The enquiry officer framed four charges against the respondent. After holding an enquiry in accordance with relevant rules, the enquiry officer submitted report with the recommendation that the respondent might be reduced in rank. However, the Government issued a notice to the

respondent requiring him to show cause as to why he may not be dismissed from service. After considering his reply, the Government dismissed the respondent from service. The respondent challenged his dismissal by filing writ petition under Article 226 of the Constitution of India. The High Court quashed the order of dismissal on several grounds including the one that the respondent had not been foretold about the proposed consideration of his past adverse record.

21. *This Court approved the view taken by the High Court and observed: (Manche Gowda case, AIR pp. 509-10, para 7)*

“7. Under Article 311(2) of the Constitution, as interpreted by this Court, a government servant must have a reasonable opportunity not only to prove that he is not guilty of the charges levelled against him, but also to establish that the punishment proposed to be imposed is either not called for or excessive. The said opportunity is to be a reasonable opportunity and, therefore, it is necessary that the government servant must be told of the grounds on which it is proposed to take such action: see the decision of this Court in State of Assam v. Bimal Kumar Pandit. If the grounds are not given in the notice, it would be well nigh impossible for him to predicate what is operating on the mind of the authority concerned in proposing a particular punishment: he would not be in a position to explain why he does not deserve any punishment at all or that the punishment proposed is excessive. If the proposed punishment was mainly based upon the previous record of a government servant and that was not disclosed in the notice, it would mean that the main reason for the proposed punishment was withheld from the knowledge of the government servant. It would be no answer to suggest that every government servant must have had knowledge of the fact that his past record would necessarily be taken into consideration by the Government in inflicting punishment on him; nor

would it be an adequate answer to say that he knew as a matter of fact that the earlier punishments were imposed on him or that he knew of his past record. This contention misses the real point, namely, that what the government servant is entitled to is not the knowledge of certain facts but the fact that those facts will be taken into consideration by the Government in inflicting punishment on him. It is not possible for him to know what period of his past record or what acts or omissions of his in a particular period would be considered. If that fact was brought to his notice, he might explain that he had no knowledge of the remarks of his superior officers, that he had adequate explanation to offer for the alleged remarks or that his conduct subsequent to the remarks had been exemplary or at any rate approved by the superior officers. Even if the authority concerned took into consideration only the facts for which he was punished, it would be open to him to put forward before the said authority many mitigating circumstances or some other explanation why those punishments were given to him or that subsequent to the punishments he had served to the satisfaction of the authorities concerned till the time of the present enquiry. He may have many other explanations. The point is not whether his explanation would be acceptable, but whether he has been given an opportunity to give his explanation. We cannot accept the doctrine of 'presumptive knowledge' or that of 'purposeless enquiry', as their acceptance will be subversive of the principle of 'reasonable opportunity'. We, therefore, hold that it is incumbent upon the authority to give the government servant at the second stage reasonable opportunity to show cause against the proposed punishment and if the proposed punishment is also based on his previous punishments or his previous bad record, this should be included in the second notice so that he may be able to give an explanation."

The proposition laid down in the above-noted judgment represents one of the basic canons of justice that no one can be condemned unheard and no order prejudicially affecting any person can be passed by a public authority without affording him reasonable opportunity to defend himself or represent his cause.

22. As a general rule, an authority entrusted with the task of deciding lis between the parties or empowered to make an order which prejudicially affects the rights of any individual or visits him with civil consequences is duty-bound to act in consonance with the basic rules of natural justice including the one that material sought to be used against the person concerned must be disclosed to him and he should be given an opportunity to explain his position. This unwritten right of hearing is fundamental to a just decision, which forms an integral part of the concept of rule of law. This right has its roots in the notion of fair procedure. It draws the attention of the authority concerned to the imperative necessity of not overlooking the cause which may be shown by the other side before coming to its decision.

23. When it comes to taking of disciplinary action against a delinquent employee, the employer is not only required to make the employee aware of the specific imputations of misconduct but also to disclose the material sought to be used against him and give him a reasonable opportunity of explaining his position or defending himself. If the employer uses some material adverse to the employee about which the latter is not given notice, the final decision gets vitiated on the ground of the violation of the rule of audi alteram partem. Even if there are no statutory rules which regulate holding of disciplinary enquiry against a delinquent employee, the employer is duty-bound to act in consonance with the rules of natural justice—U.P. Warehousing Corpn. v. Vijay Narayan Vajpayee.”

It cannot be denied that in the present case, the past

conduct has been relied upon while imposing the punishment of

dismissal on the petitioner. The petitioner has categorically stated that he was not informed that the past conduct would be relied upon. There is no denial to this. Therefore, in view of the settled legal position, there is no option but to conclude that the punishment imposed on the petitioner cannot sustain. Accordingly, the orders of the Disciplinary Authority dated 2.6.2007 and the Appellate Authority dated 12.2.2008 Annexure P-9 and P-11 respectively, are quashed.

The disciplinary authority may now re-consider the issue of quantum of punishment afresh. If the past conduct of the petitioner is to be relied upon, then he be given notice of the same so that he may have opportunity to make appropriate representation with regard thereto.

The petition is allowed in the above terms.

July 07, 2015
Atul

(HARINDER SINGH SIDHU)
JUDGE