

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

CWP No.17936 of 2014 (O&M)

Date of decision: 13.02.2015

Sarwan Singh @ Swaran Singh

... Petitioner

Vs.

The Presiding Officer & another

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Rakesh Nagpal, Advocate for the petitioner.

.....

TEJINDER SINGH DHINDSA, J.

The instant writ petition is directed against the award dated 18.02.2013 passed by the Industrial Tribunal-cum-Labour Court, Hissar, whereby the reference has been answered against the petitioner and the action of the Sirsa Central Cooperative Bank Limited in having imposed the penalty of dismissal upon the petitioner has been upheld.

Counsel appearing for the petitioner has raised a two fold submission. It has been argued that the petitioner was appointed as a Secretary with the respondent/bank in the year 1978 and it is only on 30.08.2007 that the order of dismissal has been passed and as such, while imposing such extreme penalty, the length of service rendered by the petitioner has not been taken into account either by the Punishing Authority or by the labour Court while exercising discretion under Section 11-A of the Industrial Disputes Act, 1947 (hereinafter to be referred to as the Act). The second submission raised by the counsel is with regard to discrimination. It is contended that similar allegations had also been levelled against the co-

employee, Prem Singh and in his case also inquiry had been held and inspite of aforesaid Prem Singh having been found guilty, he has been reinstated in service, whereas the petitioner has been dismissed.

It may be taken note of that even though, in the pleadings on record, it has been averred that the inquiry proceedings conducted against the petitioner were not fair and proper and neither was copy of the inquiry report furnished to the petitioner along with show cause notice, yet such grounds have not been pressed at the time of arguments.

Counsel for the petitioner has been heard at length and the pleadings on record have been perused.

Facts that would emerge are that the petitioner was appointed with the respondent/bank on 30.05.1978 on the post of Secretary. On 31.07.1998, he was placed under suspension for certain acts of omission and commission. On 18.06.2001, he was charge sheeted under the provisions of the Haryana State Central Cooperative Bank Staff Services (Common Cadre Rules), 1975 in which, 66 articles of charge relating to embezzlement of funds were formulated. After conducting regular inquiry proceedings, findings were returned against the petitioner and he was issued a show cause notice dated 22.07.2006 contemplating the imposition of major penalty of dismissal from service. The petitioner duly filed reply to the show cause notice and thereafter, the matter was put up before the Board of Directors of the respondent/bank and an opportunity of personal hearing was also granted to the petitioner. The disciplinary proceedings finally culminated in the issuance of an order of dismissal dated 08.09.2007.

Perusal of the impugned award dated 18.02.2013 (Annexure P-4) would reveal that a finding of fact has been recorded by the labour

Court that a fair and impartial inquiry had been conducted against the petitioner. Copy of the statements of the witnesses recorded by the Inquiry Officer had been placed on the file as Ex.MW2/2 and the petitioner was afforded an opportunity to cross examine the 64 witnesses examined by the department. The petitioner had been served with a show cause notice dated 22.07.2006, Ex.M9, contemplating the imposition of punishment of dismissal from service and he had even been supplied a copy of the inquiry report along with the show cause notice and was given 15 days' time to file reply thereto. The reply furnished by the petitioner was also adduced on record as Ex.M10. Even a personal hearing was granted to the petitioner before the Board of Directors of the respondent/bank prior to passing of the order of dismissal. Such findings recorded by the labour Court are on due appreciation of evidence adduced on record. There would be no scope of interference in the same by this Court under Article 226 of the Constitution of India while exercising supervisory jurisdiction.

The scope and extent of judicial scrutiny in administrative decisions relating to punishment in disciplinary cases questioned as arbitrary under Article 14 of the Constitution of India and as regards the quantum of punishment awarded, has been considered by the Hon'ble Supreme Court in a catena of judgments. *In BC Chaturvedi v. Union of India and others*, 1996 (1) SCT 617, it was observed as follows:

"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the

power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

The issue that stands settled is that the Courts should not interfere with the decisions of the competent authority unless it is illogical palpably erroneous, suffers from procedural impropriety or is shocking to the conscience of the Court. The Court would refrain from going into the correctness and extent of penalty imposed by the punishing authority and would not substitute its own opinion to that of the punishing authority. The scope of judicial review is limited to the deficiency in the decision making process and not the decision.

In the present case, the order of dismissal from service dated 08.09.2007 has been placed on record as Annexure P-5. Perusal of the same would reveal that there were as many as 66 articles of charge relating to embezzlement of funds and financial irregularities attributed to the petitioner while serving on the post of Secretary of the respondent/bank. Out of 66 charges, 55 stood duly proved in the inquiry proceedings, 6 charges were partially proved and 2 were not proved. Against the backdrop of such serious charges and by following the dictum laid down by the Hon'ble Supreme Court in ***B.C. Chaturvedi's case (supra)***, no scope for interference in the quantum of punishment is made out.

Even the plea of discrimination raised by the counsel by citing

the instance of co-employee, Prem Singh is found to be without merit. Undoubtedly, in the 66 articles of charge, formulated and inquired into against the petitioner, there were a few charges in which Prem Singh is also alleged to have connived with the petitioner. Be that as it may, the petitioner was serving on the post of Secretary, whereas, Prem Singh was his subordinate i.e. was holding the post of Salesman. Parity, as such, cannot be claimed by the petitioner. That apart, the concept of equality as enshrined under Article 14 of the Constitution of India is a positive concept. Even if co-employee, Prem Singh has escaped punishment, it would not be open for the petitioner to raise the ground of arbitrariness in the light of allegations with regard to embezzlement of funds and financial impropriety having been proved against him.

This Court does not find any infirmity with the labour Court having declined to exercise discretion under Section 11-A of the Act so as to interfere and to impose a lesser penalty.

No merit.

Writ petition is dismissed.

13.02.2015

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

Note: Whether referred to the Reporter? Yes