IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No. 4537 of 2011 (O&M)
Date of decision : November 05, 2015

Pradeep Kumar .....Petitioner

Versus

Bank of Baroda and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. V.K. Shukla, Advocate
for the petitioner.

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

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LISA GILL, J.

Petitioner is aggrieved of order dated 28.11.2008 (Annexure P-3) passed by Deputy General Manager and Disciplinary Authority whereby petitioner has been removed from respondent-Bank's service with retiral benefits and without disqualification from future employment. He is also aggrieved of order dated 19.12.2009 (Annexure P-4) passed by respondent No. 2 – General Manager, Bank of Baroda whereby petitioner's appeal challenging order dated 28.11.2008 has been dismissed.

Brief facts of the case are that petitioner was inducted as Part Time Sweeper with respondent-Bank on 18.11.1991. He was confirmed in regular pay scale on 16.07.1992. He was transferred to Sirsa Branch of respondent-Bank from Ferozepur. On 25.10.2007, he was directed to report for duty on 27.10.2007. Petitioner's case is that he was unable to join at Sirsa due to his wife's illness. Inquiry was directed to be conducted and inquiry officer appointed vide order dated 24.05.2008. Allegations against the petitioner are that he remained on unauthorised absence for 1086 days. Head of the Sirsa Branch issued numerous letters including UPC/registered AD but he neither reported for duty nor sent any communication to the Bank in respect of his unauthorised absence coupled with suitable proofs/justification. He was allowed to join duty on 11.04.2008 on his submission that he remained on unauthorised absence due to family problems but he was found to be absent without sanction of leave or information to the Bank. Third allegation against the petitioner is that on 04.10.2007 he misbehaved with the Branch Head in an inebriated condition. He put his shoe on the office table and started shouting and challenging staff members. He did not improve his work and conduct/attendance and punctuality despite being counselled and so advised. Accordingly, three charges, as under, were framed against him:-

> CHARGE No. 1: By remaining on unauthorised absence without intimation continuously for a period exceeding 30 days, you have committed an act which constitutes gross misconduct under clause 5(p) of memorandum of

settlement dated 10.04.2002.

CHARGE No. 2: By your acts of riotous behaviour on 04.10.2007/not performing allotted duties/remaining on unauthorised absence on loss of pay, working of Ferozepur/Sirsa Branches has been adversely affected and thus you have committed acts prejudicial to the interest of Bank, which constitutes gross misconduct under clause 5(j) of memorandum of settlement dated 10.04.2002.

CHARGE No. 3: By remaining on unauthorised absence on loss of pay intermittently for the period as mentioned above and not obeying instructions of your superiors for reporting for duty, you have shown wilful insubordination and disobedience of lawful instructions of the Bank, which constitutes gross misconduct under clause 5 (e) of memorandum of settlement dated 10.04.2002.

As per inquiry report dated 06.10.2008 (Annexure P-2) all the charges against him were proved. Disciplinary authority awarded punishment of removal from Bank's service with superannuation benefits i.e. pension and/or Provident Fund and Gratuity as would be due otherwise under the rules and regulations prevailing at the relevant time and without disqualification from future employment with effect from the date of the order dated 28.11.2008 (Annexure P-3). Petitioner's appeal against this order has been dismissed vide order dated 19.12.2009 (Annexure P-4). Aggrieved therefrom present writ petition has been preferred by the petitioner.

Learned counsel for the petitioner submits that proper procedure as envisaged under the memorandum of settlement dated

10.04.2002 dealing with disciplinary action and procedure for workmen staff has not been followed inasmuch as there is gross violation of Regulation 12 (a) and (c) of the memorandum. Photocopy of this memorandum dated 10.4.2002 has been produced in Court today. Regulation 12 (a) and (c) read as under:-

> The procedure in such cases shall be as follows:
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> a) An employee against whom disciplinary action is proposed or likely to be taken shall be given a charge-sheet clearly setting forth the circumstances appearing against him and a date shall be fixed for enquiry, sufficient time being given to him to enable him to prepare and give his explanation as also to produce any evidence that he may wish to tender his defence. He shall be permitted to appear before the Officer conducting the enquiry, to cross-examine any witness on whose evidence the charge rests and to examine witnesses and produce other evidence in this defence. He shall also be permitted to be defended.
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> (i) (X) by a representative of a registered trade union of bank employees of which he is a member on the date first notified for the commencement of the enquiry.
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> (Y) where the employee is not a member of any trade union of bank employees on the aforesaid date, by a representative of a registered trade union of employees of the bank in which he is employed:
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> OR
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> (ii) at the request of the said union by a representative of the state federation or all India organisation to which such union is affiliated;
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> OR

(iii) with the Bank's permission, by a lawyer.

He shall also be given a hearing as regards the nature of the proposed punishment in case any charge is established against him.

Note: in case of workmen in Banks representation in domestic enquiry can only be as laid down in the Bipartite Settlement. Therefore, a reference to registered trade union of bank employees in clause 19, 12 of the First Bipartite Settlement would refer to a 'trade union of workmen' only.

Reference Chandigarh Circle Circular Letter no. CirDO/P&HRD/45/2005-06 DTD 17th June, 2005.

c) In awarding punishment by way of disciplinary action the authority concerned shall take into account the gravity of the misconduct, the previous record, if any, of the employee and any other aggravating or extenuating circumstances, that may exist. Where sufficiently extenuating circumstances exist the misconduct may be condoned and in case such misconduct is of the "gross" type he may be merely discharged with or without notice or on payment of a month's pay and allowances, in lieu of notice. Such discharge may also be given where the evidence is found to be insufficient to sustain the charge and where the bank does not, for some reason or other, think it expedient to retain the employee in question any longer in service. Discharge in such cases shall not be deemed to amount to disciplinary action.

It is vehemently argued that apart from procedural irregularities as above, quantum of punishment is not commensurate with gravity of misconduct. It is, thus, prayed that impugned orders are liable to be set aside and in the alternate, petitioner be visited with a lesser punishment

Learned counsel for the respondents while refuting the above argues that impugned orders have been correctly passed in accordance with provisions of law. There is no ground whatsoever in the petitioner's favour. Lenient view has already been taken while imposing the punishment.

I have heard learned counsel for the parties. It is not denied that a notice of preliminary hearing was issued to the petitioner on 14.06.2008 and preliminary hearing was held on 27.06.2008 at Bank of Baroda, Sirsa Branch. Petitioner did not attend and he telephonically informed the authorities that he and his father were not well. On his request, next date of preliminary hearing was fixed for 12.07.2008 and thereafter hearing was concluded on 24.07.2008. Respondent-Bank produced three witnesses on the said date and one defence witness was also produced by the petitioner.

Contention of learned counsel for the petitioner that inquiry is vitiated as all the witnesses of the Bank as well as the defence witness were examined on the same day and proceedings were concluded is not tenable. Learned counsel for the petitioner is unable to point out any prejudice which may have been caused to the petitioner. Consequent to the hearing on 24.07.2008, respondent-Bank was directed to submit its written brief by 08.08.2008 which was filed on 07.08.2008 and duly received by the petitioner on 08.08.2008. Petitioner was directed to file his reply within 15 days but he did not do so. He was again asked to file his reply by 08.09.2008 and yet another opportunity was afforded to file the same by

30.09.2008. He ultimately submitted his written brief on 01.10.2008. Perusal of the inquiry report revealed that petitioner did not submit any documents in his defence, which would justify his absence. His own witness i.e. defence witness Mr. K.R. Tripathi has not denied that the petitioner used to come to the Branch under influence of liquor though allegedly after duty hours. Charges against petitioner are duly proved and there is nothing on record to suggest that any prejudice has been caused to him on account of all witnesses of the Bank and defence witness being examined on the same day.

In respect to quantum of punishment, it is to be noted that petitioner has been removed from service with retiral benefits and without disqualification from future employment. Therefore, it cannot be said that punishment is such which shocks conscience of the Court in the facts and circumstances of the case. It has been held by the Hon'ble Supreme Court in ***U.P. State Road Transport Corporation and others versus Mahesh Kumar Mishra and others 2000 (2) SLR 435*** that this Court can interfere with punishment awarded if it shocks conscience of the Court. It is apparent from the entire facts and circumstances that punishment has been correctly awarded. There are no such extenuating circumstances on record which justify interference therein.

Consequently, this writ petition is dismissed.

(Lisa Gill)
Judge

November 05, 2015
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