

\$~R-10

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision :30th September, 2015

+ W.P. (C). 3228/2004

R. G. PAREEK

.... Petitioner

Through: Mr. Dinesh Kumar Garg, Mr.
Abhishek Garg, Mr. Dhananjay
Garg and Mr. Deepak Mishra,
Advs.

versus

DENA BANK THROUGH CHAIRMAN
AND MANAGING DIRECTOR & ORS.

.... Respondents

Through: Ms. Raavi Birbal and Mr. Ravindra
Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

R.K.GAUBA, J. (ORAL)

1. This petition was filed in March, 2004 praying mainly that the memorandum of Article of charges vide no.MCR/PER/MEMO/2097/03, holding it illegal, unconstitutional and violative of Articles 14, 19 and 21 of the Constitution of India and for release of all retiral benefits including leave encashment, provident fund and gratuity from the date of superannuation i.e. 30.11.2002.

2. By order dated 17.03.2004, notice was issued to the respondents and it was directed that the disciplinary proceedings against the petitioner, arising out of the impugned memorandum dated 23.12.2003,

shall remain stayed, though with clarification that the disciplinary proceedings initiated pursuant to the earlier charge-sheet dated 17/25.08.2000 could continue.

3. The pleadings were completed but the proceedings have lingered on with neither side taking any interest in final hearing or adjudication. On 05.09.2007, the matter was heard by a learned Single Judge and the petition was disposed of on certain concessions made. Immediately, after the said disposal of the writ petition – its effect being that the disciplinary proceedings could continue with respect to all the charges levelled against the petitioner by the respondent including those in the two charge-sheets dated 25.08.2000 and 23.12.2003 – the petitioner came up with a review application, stating that the submissions had not been properly understood and the order had been passed on wrong understanding of the facts. The learned Single Judge, by order dated 29.02.2008 recalled the order passed on 05.09.2007 and restored the petition to its original number. The case, thereafter, has continued with nothing done except taking of adjournments. So much so, that from 08.07.2015 whenever the matter was listed, no one would even appear on either side.

4. During hearing, learned counsel for the petitioner has taken me through the pleadings and the documents on record. The petitioner had joined the service of the first respondent as a clerk on 01.04.1965. He was confirmed in service on 01.10.1965. He was promoted in due course to the post of senior manager. On 21.03.2000, a show-cause notice was issued to him by the bank in terms of Dena Bank Officer Employee's (Conduct) Regulations, 1976 and Dena Bank Officer Employee's (Discipline and Appeal) Regulations, 1976, making certain allegations of

misconduct. The petitioner submitted a reply to the said show-cause notice on 02.05.2000. On 17/25.08.2000, the disciplinary authority issued a charge-sheet and served it upon the petitioner along with the Articles of Charges requiring him to submit his response and statement of defence. The petitioner submitted his response to the charge-sheet on 26.09.2000. On 03.09.2002, the bank issued an addendum to the show-cause notice given earlier to which the petitioner submitted a reply on 24.09.2002. This was followed by another letter dated 22.11.2002 whereby the petitioner was informed that the bank was invoking Regulation 20.3 (iii) of Dena Bank Officer's Service Regulation 1979. The petitioner retired from the service of the bank on attaining the age of superannuation on 30.11.2002.

5. On 23.12.2003, the petitioner was served with another memorandum accompanied by a fresh charge-sheet issued "in supersession" of the charge-sheet dated 17.08.2000 served earlier. It appears that the charge-sheet dated 23.12.2003 contained certain Articles of Charges beyond what had been included in the charge-sheet of 17.08.2000. This was followed by a communication dated 22.02.2004 informing him that Mr. L. P. Joshi, Chief Manager, had been appointed as inquiry officer.

6. The petition also stated that the petitioner had approached the District Consumer Redressal Forum for payment of his provident fund dues and a favourable order was passed issuing the necessary direction on 11.02.2004, by the said forum. The petitioner further claimed that he had approached the Controlling Authority under Payment of Gratuity Act, 1972 for the necessary relief and though the judgment had been reserved

by the said forum, no order had been issued till the date the petition came to be filed.

7. Learned counsel for the petitioner, however, submitted, on instructions, that all the retiral benefits have already been released in his favour and that his only claim is towards interest and leave encashment, for which he is pursuing the matter separately. He thus, pressed the petition only to the extent of challenge to the issuance of charge-sheet on 23.12.2003.

8. The petition, at hand has questioned the propriety of the action of the respondent bank by issuing a charge-sheet after the retirement of the petitioner from the service, primarily on the ground that no such disciplinary action was permissible post retirement. Though he also expressed grievance that the regulations applicable to his service required disciplinary action to be completed within a period of 99 days, and this time frame had not been adhered to after the first charge-sheet dated 17.08.2000 had been issued, at the hearing, the counsel for the petitioner conceded that the default in timely completion of the inquiry cannot be fatal to the disciplinary action.

9. In the counter affidavit, the respondent bank, *inter-alia*, explained that the first charge-sheet was not only deficient in that some of the articles of charges, which were also made out on the basis of material gathered, had been omitted. It was also claimed that the first charge-sheet had not been properly filed, in that, the requisite clearance from the Central Vigilance Commission (CVC) had not been obtained, in terms of Regulation 19 of Dena Bank Officer Employee's (Discipline and Appeal) Regulations, 1979. The respondent asserted that the fresh charge-sheet

issued on 23.12.2003 had been properly initiated, it being “in supersession” of the first charge-sheet, and that the continued action is permissible under Regulation 20(3) (iii) of Dena Bank (Officers) Service Regulations, 1979, which reads as under :-

“20(3) (iii). The officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned officer will not receive any pay and/or allowance after the date of superannuation. He will also not be entitled for the payment of retirement benefits till the proceedings are completed and final order is passed thereon except his own contribution to CPF”.

10. The petitioner has relied upon *Nagaraj Shivarao Karjagi vs. Syndicate Bank, Head Office, Manipal & another*, (1991) 3 SCC 219, to contend that the plea of the respondents that first charge-sheet was improperly issued because there was no clearance from CVC, is not correct. It is pointed out by the learned counsel, on the strength of the judgment cited that an identically worded similar provision in Syndicate Bank Officer Employees’ (Discipline and Appeal) Regulations, 1976, has been found to be contrary to the statutory regulations governing such disciplinary matters. It was held in the said case that the position of the CVC was purely advisory, and there was no mandatory requirement of its clearance to be taken. In the considered view of this court, even if the explanation about the technical defect in the fresh charge-sheet is rejected, it does not take the petition at hand any further.

11. The service regulations applicable to the case of the petitioner do not seem to explicitly permit disciplinary action being initiated post retirement. The only relevant regulation throwing some light on the issue

is the one contained in regulation 20(3) (iii) quoted earlier. It talks of permissibility of the continuation of disciplinary proceedings which may have been initiated prior to the superannuation. It only clarifies that the retirement of the employee midway the disciplinary action will not result in it being rendered invalid. The disciplinary authority is vested with power and discretion to continue it further to the logical end notwithstanding the retirement of the charged officer.

12. Even if it were to be accepted, for the sake of argument, that the regulations would not permit a disciplinary action to be initiated after an employee of the respondent bank has retired, there is no merit found in the contention that the charge-sheet issued on 23.12.2003 was a fresh disciplinary action. The memorandum dated 23.12.2003 uses the expression “in supersession” of the charge-sheet that had been issued earlier on 17.08.2000. Thus, the fresh memorandum dated 23.12.2003 was not a new action but one taken in continuation of the disciplinary action initiated earlier, admittedly at a stage when the petitioner was still in the service of the bank.

13. The petitioner has relied on the observations of the Supreme Court in case reported as *State of Orissa and others vs. Titaghur Paper Mills Company Limited*, 1985 (Supp) SCC 280, particularly the following part of para 66 :-

“...The Shorter Oxford English Dictionary, third edition, at page 2084, defines the word ‘supersession’ as meaning “The action of superseding or condition of being superseded”. Some of the meanings given to the word ‘supersede’ on the same page in that dictionary which are relevant for our purpose are “to put a stop to; to render superfluous or unnecessary; to make of no effect; to annul; to take the place of (something set aside or abandoned); to

succeed to the place occupied by; to supply the place of a thing". Webster's Third New International Dictionary at page 2296 defines the word "supersession" as "the state of being superseded; removal and replacement". Thus, by using in the notifications dated December 29, 1977, the expression 'in supersession of all previous notifications' all that was done was to repeal and replace the previous notifications by new notifications...".

14. It is the contention of the petitioner that use of the expression “supersession” means the earlier charge-sheet had been withdrawn. On the contrary, in the views of this court, the use of the expression “supersession” here is indicative of the charge-sheet earlier served being replaced by a fresh charge-sheet. The disciplinary proceedings initiated on 17.08.2000, thus, were intended to continue, though on the basis of revised charge-sheet. In this view of the matter, the proceedings arising out of the revised charge-sheet issued on 23.12.2003 would be nothing but continuation of the disciplinary proceedings as permissible under Regulation 20 (3) (iii) quoted earlier.

15. It does appear, however, that the petitioner has also taken exception to additional articles of charge being included in the revised chargesheet issued on 23.12.2003. It is the explanation of the respondent that the said additional Articles of Charge had been earlier inadvertently omitted. It seems to be the case of the respondent that material in such regard was available even prior to the retirement of the petitioner from the service of the bank. This appears to be the correct position in as much as the petitioner himself has referred to an addendum to the show-cause being served to him on 03.09.2002 to which he had given reply on 24.09.2002.

16. Be that as it may, it may not be possible or feasible, or advisable, in these proceedings, to undertake a comparative study of the two charge-sheets so as to find out as to whether the additional articles of charge included in the revised charge-sheet were founded on the material that was the available at the time of first charge-sheet, or at the time of the addendum to the show-cause notice or that the same arose on the basis of some further inquiry post retirement. In these circumstances, the question as to whether the additional charges could have been laid in the revised charge-sheet will have to remain, for the present, unaddressed.

17. The main objection of the petitioner to the revised charge-sheet issued on 23.12.2003, having been found devoid of substance, the petition cannot succeed. It is trite that at the stage of the disciplinary proceedings, when the petition at hand was brought to this court, interference in the action of the disciplinary authority would be uncalled for.

18. In view of above, the writ petition is dismissed, though reserving the contention of the petitioner as to the permissibility of additional charges to be included in the revised charge-sheet dated 23.12.2003 to be raised at appropriate stage before an appropriate forum, should he be found guilty of such additional charges. The interim stay stands vacated.

(R.K.GAUBA)
Judge

SEPTEMBER 30, 2015

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