

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.17208 of 2013 (O&M)
Date of Decision:-13.12.2016.

Gulzar Singh Sandhu

.....Petitioner

Versus

Punjab National Bank and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Ram Lal Gupta, Advocate for the petitioner.

Mr. Saurav Verma, Advocate for the respondents.

P.B. BAJANTHRI, J. (Oral)

1.) In the instant writ petition, the petitioner has questioned the validity of the orders dated 11.11.2011, 17.1.2013 and 21.5.2013 vide Annexures P-11, P-13 and P-15, respectively.

2.) The petitioner while working as Manager, he was charge-sheeted with reference to certain irregularities relating to clearance of overdrafts, taking away desert cooler of the Bank for his personal use, he guaranteed the account of one Shri Lachman Singh etc. In this regard, disciplinary proceedings were initiated and it was concluded in imposing the penalty of dismissal from service on 10.11.1988 under the Punjab National Bank (Officers') Service Regulations, 1979 (for short 'Regulations 1979'). Feeling aggrieved by the order of dismissal, he filed suit for declaration before the Trial Court. Trial Court rejected his suit.

Consequently, he preferred an appeal before the Appellate Court. The Appellate Court set aside the order of his dismissal. Thus, the respondent Bank preferred an RSA before this Court. On 14.7.2011, RSA No.5457 of 2003 was disposed of. Extract of the order reads as under:-

*“In view of the above circumstances, the question of law framed at the time of admission of the appeal having been answered in **KK. Verma’s** case (supra), no ground is made out for interference in the judgment of the lower Appellate Court. The appeal is dismissed. The order of lower Appellate Court setting aside the dismissal order dated November 10, 1988 is upheld on the ground that the proper opportunity has not been given to the plaintiff- respondent to submit a representation against the enquiry report dated October 17, 1988 and the decision of the disciplinary authority to dismiss the plaintiff- respondent. Plaintiff- respondent will be entitled to submit a representation against the proposed dismissal and the report of the enquiry officer dated October 17, 1988 within a period of four weeks from the date of pronouncement of this judgment. The defendant appellants punishing authority will be required to proceed further to consider the same in accordance with law by passing a speaking order within a period of three months thereafter. In case of failure on the part of the defendant to consider the representation, the plaintiff- respondent will be entitled to all the consequential benefits accruing from the setting aside of the dismissal order dated November 10, 1988.”*

3.) In the meanwhile, the petitioner attained the age of 58 years on 8.1.2002 and he ceased to be employee. Pursuant to the directions issued by this Court in RSA No.5457 of 2003, the respondent proceeded to issue show

cause notice along with the Inquiring Officer's report seeking explanation of the petitioner on 25.10.2011. Since the respondents were not satisfied with the reply of the petitioner, respondent-Bank proceeded to pass order on 11.11.2011 while dismissing the petitioner w.e.f. 10.11.1988. Extract of the order dated 11.11.2011 reads as under:-

“Taking an overall view of the case, I decide to impose upon Shri Gulzar Singh Sandhu a major penalty of 'Removal from Bank's Service, which shall not be a disqualification for future employment' under Regulation 49I0 of Punjab National Bank Officer Employees' Discipline & Appeal Regulations, 1977 and the said order will be effective from 10.11.1988. Further, no wages will be paid to Shri Sandhu for the period he remained under suspension excepting the subsistence allowance already paid/payable to him.

I order accordingly and Shri Gulzar Singh is informed.”

4.) The petitioner filed appeal before the Appellate Authority. The same was rejected on 17.1.2013 and further he filed review petition before the revisional authority and it was dismissed on 21.5.2013. Thus, the present writ petition has been filed.

5.) Learned counsel for the petitioner vehemently contended that he is deemed to be retired from service as and when he completed 58 years on 8.1.2002. Therefore, question of imposing the penalty of dismissal from service on 11.11.2011 with retrospective effect from 10.11.1988 i.e. the date on which earlier dismissal order was passed is impermissible. It was further submitted that Regulations, 1979 do not provide for imposing any penalty from retrospective date and it was also contended that this Court while

dated 10.11.1988 directed the respondents to proceed further in accordance with law by passing a speaking order. In accordance with law means the respondents are required to pass order in accordance with the Regulations, 1979 if it permits or any other statutory regulations for imposing any penalty on a retired employee and they cannot go beyond the scope of the Regulations, 1979 or any other applicable regulation. Whereas in the present matter, the respondents have imposed the penalty of dismissal from service with retrospective effect i.e. from 10.11.1988 which is impermissible since statutory provisions do not provide for imposing such penalty from retrospective date.

6.) On the other hand, learned counsel for the respondents submitted that Regulations, 1979 in particularly Regulation No.20 (3) provides for continuation of disciplinary proceedings even though if he has retired from service as if an employee was in service until the proceedings are concluded and provision also makes it clear that the concerned Officer will not receive any pay and/or allowances after the date of superannuation etc. Therefore, the respondents are empowered to impose the penalty and there is no infirmity in the order dated 11.11.2011 and further decision of the appellate as well as revisional authority. Learned counsel for the respondents relied on the decisions passed in LPA No.1312 of 2016 which reads as under:-

“LPA No.1312 of 2016 (O&M)

It is contended, inter-alia, that as per the Inquiry Officer, charge No.1 (A) was provided fully and charge No.3 was proved partly against the respondent. The Disciplinary Authority disagreed with the Inquiry Officer and held the respondent responsible qua all the

charges. Even if the learned Single Judge was to disapprove the action of the Disciplinary Authority, in the case, the matter ought to have been remanded to the Disciplinary Authority for imposition of proportionate punishment keeping in view those charges which were proved by the Inquiry Officer.”

- 7.) In the case of CM No.2992-LPA of 2012 in LPA No.266 of 2012 it is held as under :-

“C.M. No.2992-LPA of 2012

After hearing learned counsel for both the parties, we do not find any ground to modify our earlier order dated 17.4.2012 and change the date of compulsory retirement from 30.3.1985 which was the date of the order of punishment to 31.9.1987, the date on which the applicant would have been superannuated.”

- 8.) It was also contended in the case of **Punjab National Bank and others Vs. K.K. Verma**, the Hon'ble Supreme Court has passed the following order:-

“32. In the circumstances, though in principle, we uphold the order of the learned Single Judge, we modify the same to a limited extent by observing that the respondent is to be given a copy of the report of the Inquiry Officer and the detailed order of the Disciplinary Authority differing therewith, basically to afford him the opportunity to explain his position with respect to the charges and prove his innocence. The Learned Single Judge has directed that the competent authority will keep in mind that the respondent is out of job since 1985 and in that context it should also consider the factor of the service put in by him. We may also add that the competent authority

may as well consider that when the respondent was removed, his date of retirement viz. 30.9.1987 was round the corner. We however, make it clear that it is for the competent authority to consider these aspects, when he takes steps in accordance with the impugned judgments which we confirm with the modification as above.”

9.) Learned counsel for the respondents relied on one more decision of Hon'ble the Apex Court in **Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and others** to contend that imposition of penalty retrospectively is permissible. Therefore, there is no infirmity in the order passed by the respondents dated 11.11.2011.

10.) Heard learned counsel for the parties.

11.) Having regard to the order passed in RSA No.5457 of 2003 on 14.7.2011, while disposing the appeal, this Court taken note of setting aside of order of dismissal by the Appellate Court, disposed of the appeal with a direction that defendant-appellants (respondents herein) punishing authority will be required to proceed further to consider the same in accordance with law by passing speaking order within a period of three months thereafter. The order passed in RSA No.5457 of 2003 do not permit the respondents to impose the penalty retrospectively. Further examination of the Regulations, 1979 also do not provide or empower competent authority to impose the penalty of dismissal from service from retrospective date. In fact retired officers do not fall under applicability clause of Regulations, 1979. An extract of Regulation No.2 reads as under:-

“2. Officers to Whom the Regulations Apply

(1) These regulations shall apply to all

officers of the Bank and to such other employees of the Bank to whom they may be made applicable by the Competent Authority to the extent and subject to such conditions as such Authority may decide.

(2) They shall also apply to officers transferred/posted/deputed outside India except to such extent as may be specifically or generally prescribed by the Competent Authority.

(3) They shall, however, not apply to employees appointed/engaged in any country outside India and permanently serving there.”

12.) Having regard to the order of the Appellate Court, order passed in RSA No.5457 of 2003 read with Regulations, 1979, the respondents were not empowered to impose the penalty at all as on 11.11.2011. Moreover, the petitioner has already in the normal course attained the age of superannuation and deemed to be retired from service on 8.1.2002. Therefore, question of imposition of penalty of dismissal from service on 11.11.2011 is impermissible for the reasons that no statutory provision provides for imposing such a penalty that too retrospectively. It is to be noted that even there is no judicial order for imposing penalty of dismissal with retrospective date. Judicial pronouncement is to the extent of to pass order in accordance with law.

13.) Learned counsel for the respondents relied on the decisions of this Court passed in LPA No.1312 of 2016, CM-2992-LPA of 2012 arising out of LPA No.2662 of 2012, decision of the Apex Court in **Punjab National Bank and others Vs. K.K. Verma** and the decision in the case of **Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and others** are concerned, in all the

aforesaid decisions facts of the case are entirely different and none of the cited decision is relating to imposition of penalty retrospectively and interpretation of Regulations, 1979 was not the subject matter for the reasons that in the present case the order of dismissal dated 10.11.1988 was set aside by the Appellate Court whereas this Court in RSA No.5457 of 2003 while upholding the order of Appellate Court directed the respondent Bank proceeded in accordance with law. Therefore, neither statutory provision nor judicial order permit the respondents to impose the penalty of dismissal from retrospective effect so as to strengthen the hands of the respondent-Bank to impose penalty of dismissal retrospectively. Therefore, the cited decisions are distinguishable. In view of the narrated facts and legal position and circumstances, the order dated 11.11.2011, 17.1.2013 and 21.5.2013 (Annexures P-11, P-13 and P-15, respectively) are set aside. Reserving liberty to the respondent-Bank to pass orders if statutory provision, if any, provides for imposing penalty on a retired employee.

14.) Writ petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

December 13, 2016.

sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.