IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.18494 of 2013
Date of Decision:-30.11.2016.

Ramesh Kumar

......Petitioner

Versus

Presiding Officer and others

......Respondents

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

****

Present: Mr. C.M. Chopra, Advocate for the petitioner.

Mr. Vipin Mahajan, Advocate for respondent Nos.2 to 4.

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P.B. BAJANTHRI, J. (Oral)

1.) In the instant writ petition, the petitioner has assailed the award passed by the CGIT-cum-Labour Court-I, Chandigarh dated 17.10.2012.

2.) The petitioner while working as a Special Assistant in Syndicate Bank, Jammu Branch, he was charge sheeted on 5.2.1990 on certain allegations like giving facility to the account holders before it was due date like overdrawal against post-dated cheque and he himself was involved in transaction with the account holders by availing handloan and repaying the same. For the purpose of such transaction in the Bank, it would be more than one official/employee would require, whereas the respondent-Bank have initiated disciplinary proceedings only against the petitioner. The inquiry was ended in imposing the penalty of dismissal from service on 16.12.1992. Thereafter, the petitioner preferred an appeal and the same was rejected on 11.5.1993. He approached Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh (for short 'CGIT').

CGIT upheld the order of penalty on 17.10.2012 holding that petitioner is not entitled to any relief. Hence, the present petition.

3.) Learned counsel for the petitioner submitted that the respondents have not taken any action against the other officials/employees of the Jammu Branch having regard to the charges that the petitioner allowed certain transactions of the customers to their satisfaction exceeding his power and so also violating certain norms of the Bank like overdrawal of certain amounts which are adjusted with reference to post-dated cheque etc. The petitioner as a Special Assistant cannot do such misconduct without connivance with the other officials who are also party to such allegations. In other words, for the purpose of overdrawal and clearing post dated cheque cannot be based on single employee's action and it has to pass through Officer or Branch Manager etc. Thus, the petitioner has been made scapegoat while initiating disciplinary proceedings. It was further contended that no loss has been caused to the Bank due to the alleged action of the petitioner.

4.) Learned counsel for the petitioner submitted that MW-1 S.K. Taneja, Chief Manager, Syndicate Branch, Regional Office, Chandigarh who has adduced before the CGIT in his evidence he has stated as under:-

> *"MW1 S.K. Taneja, Chief Manager, Syndicate Bank, Regional Office, Chandigarh on SA.*
>
> *I tender in evidence my affidavit dated 3.9.2012 Ex. MI in evidence.*
>
> *xx xx (By Shri B.N. Sehgal for the workman)*
>
> *I have seen the case file of the workman. It is correct that before the present proceedings, there were no other proceedings during his 20 years of service. Prior to this incident his annual confidential*

reports were satisfactory and quite good. No account holder was produced as witnesses during enquiry. No account holder or any public man made any complaint against the workman Ramesh Kumr, Enquiry Officer Mr. P.P. Setti was an employee of the bank. When the charge sheet was served to the workman list of witnesses and documents were not enclosed with the charge sheet. The workman is governed under Sastri Award, Desai Award and Bipartite Settlements. It is correct that workman Ramesh Kumar joined this branch in January 1987. I don't know whether the overdrafts and other irregularities have been committed and other connivance of the then branch manager. It is the duty of the branch manager to get sanction from the divisional office. It is incorrect to say that workman Ramesh Kumar did not cause any loss to the bank. I do not know whether the then bank manager Mr. K.R. Narayan had appeared during the enquiry as witnesses. It is correct that the enquiry was not conducted in my presence. It was never posted in the Jammu Branch of Syndicate bank, that is why I have no personal knowledge and I am stating on the basis of record. It is incorrect that the charges have not proved against the workman during enquiry. It is incorrect that I am deposing falsely.

RO&AC *P.O.*

Sd/- *Chd. 24.9.2012*

5.) In view of the evidence adduced by MW-1 S.K. Taneja, Chief Manager, Syndicate Branch, Regional Office, Chandigarh, it is evident that petitioner has not caused any loss to the Bank and he has rendered 20 (18) years of service and during his entire service, this is the only misconduct or allegations. Further there is lacuna in the disciplinary proceedings in nonexamining the holders of the account and they have not been summoned for taking their evidence. It was further submitted that along with the chargesheet, list of documents and witnesses were not supplied to him whereby petitioner has been denied reasonable opportunity to submit his explanation effectively. Therefore, entire inquiry proceedings are vitiated.

6.) On the other hand, learned counsel for the respondents vehemently contended that the petitioner is not a trustworthy employee of the Bank as he has transacted with the customers of the Bank in order to facilitate them by providing them overdrafts and other irregularities committed which are part of the charges. Therefore, rightly the disciplinary authority has imposed the penalty of dismissal from service. The same has been affirmed by the Appellate Authority as well as CGIT. It was further contended that merely non-furnishing of list of documents and witnesses along with charge sheet and non-examination of account holder that does not vitiate the inquiry proceedings. Thus, the petitioner has not made out a case so as to interfere with the order of the CGIT-cum-Labour Court-I, Chandigarh.

7.) Heard learned counsel for the parties.

8.) Perusal of the evidence adduced by MW-1 S.K. Taneja, Chief Manager, Syndicate Branch, Regional Office, Chandigarh admittedly, the petitioner has rendered 20 (18) years of service. He was not involved in any other allegations as is evident. That the inquiry proceedings have not been held in accordance with the principles of natural justice i.e. providing opportunity of adducing evidence from the Bank account holders which are cited in charges etc. Further it is evident that in the inquiry proceedings, the Inquiry Officer's/disciplinary authority have not made any effort to bring witnesses like account holders so as to substantiate the charges. Even though records reveal that the overdraft and other facilities which has been given to the account holders of the Branch but still the respondents-disciplinary authority should have given reasonable opportunity to adduce evidence so as to find out under what circumstances such facilities were extended. Moreover, in the transactions like overdraft and other transactions of the account holders, the petitioner cannot alone handle or deal with such transactions. Such transaction would be completed as and when it passes through more than one employee of the Branch and the charge is that the petitioner alone has committed irregularities like granting overdraft. Thus, petitioner has been made scapegoat in the matter. In view of these facts and circumstances, there are certain lacunae in the disciplinary proceedings. That apart the evidence adduced by MW-1 S.K. Taneja, Chief Manager, Syndicate Branch, Regional Office, Chandigarh is taken into consideration, the matter is required to be remanded to the disciplinary authority for holding further inquiry from the defective stage. However, it is not appropriate at this distance of time to remand the matter to the Inquiring Officer to continue the inquiry from the defective stage for two reasons, namely, (i) the petitioner was dismissed from service on 16.12.1992 and we are in the year 2016 and (ii) the petitioner is aged about 63 years. Therefore, it is necessary to remand the matter to the disciplinary authority for modifying the penalty of dismissal to that of any other penalty in accordance with law. The order of dismissal dated 16.12.1992, Appellate Authority's order dated 11.5.1993 and CGIT order dated 17.10.2012 are set aside. The matter is remanded to the authority for imposing any other penalty other than dismissal. Such action shall be taken by the disciplinary authority within a period of four months. It is made clear that the petitioner is not entitled to interest on any retiral benefits.

9.) Petition stands disposed of.

(P.B. BAJANTHRI)
JUDGE

November 30, 2016.
sandeep sethi

Whether speaking/reasoned:- Yes / No

Whether Reportable:- Yes / No.