

In the High Court of Punjab and Haryana at Chandigarh

**Civil Writ Petition No. 2006 of 2014
Date of Decision: 12.1.2016.**

Harinder Pal Singh

.....Petitioner

Versus

Punjab and Sind Bank and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. G.S.Bal, Senior Advocate with
Ms. Manju Sharma, Advocate
for the petitioner.

Mr. R. Kartikeya, Advocate
for the respondents.

SABINA, J.

Petitioner has filed this petition under Article 226 of the Constitution of India challenging the orders dated 13.6.2013 (Annexure P-7) and 21.10.2013 (Annexure P-9).

Learned senior counsel for the petitioner has submitted that departmental proceedings were initiated against the petitioner on the basis of a complaint made against him by Malkiat Singh. However, petitioner was found innocent during enquiry. Thereafter, second enquiry was ordered to be held against the petitioner. In the second enquiry also, the Enquiry Officer gave report (Annexure P-5) that the charges levelled against the petitioner were not proved. Despite the said fact, the punishing authority had passed the punishment order Annexure P-7 on the basis of presumptions. The said order was upheld by the Appellate Authority by passing a non-speaking order.

Learned counsel for the respondents, on the other hand, has opposed the petition.

Admittedly, petitioner was posted as Branch Manager at the relevant time i.e. March 2011. M/s Panesar Agriculture Works approached the petitioner for the Renewal-cum-Encashment of their credit facility on 19.2.2011. The customer had sought that the limit of working capital be raised from ₹ 1,00,00,000/- to ₹ 2,00,00,000/- and term loan from ₹ 1,11,60,000/- to ₹ 2,66,00,000/-. Petitioner had recommended the case of the said customer on 25.2.2011. The proposal was sanctioned by respondent No. 3 on 14.3.2011 and the due amount was disbursed by the branch office on 18.3.2011. Thereafter, M/s Panesar Agriculture Works moved a complaint that the petitioner had demanded 4% of the credit facility and later the demand was reduced to 2.5%. Petitioner received letter dated 16.4.2011 in this regard to explain his position. Petitioner submitted his representation dated 12.5.2011. Respondents were not satisfied with the reply submitted by the petitioner and charge sheet was issued to the petitioner for imposition of major penalty. Petitioner denied the charges levelled against him. Regular enquiry was ordered to be held against the petitioner. The Enquiry Officer found that the petitioner was innocent. Thereafter, another enquiry was ordered to be held against the petitioner. In the said enquiry also, the Enquiry Officer vide its report (Annexure P-5) held that the charges levelled against the petitioner were not proved.

The findings of the Enquiry Officer read as under:-

“The said enquiry was started on 11.1.2013 and completed on 22.1.2013. During the enquiry proceedings,

the Management witnesses were called for witnesses on dated 16.1.2013 and 21.1.2013. The CSO was also given opportunity to present his case. After completion of the proceedings, the proceedings register as well as other documents are attached herewith.

I have gone through the submissions of PO. The main witness Mr. Malkiat Singh-Partner of M/s Panesar Agriculture Works did not appear personally but sent letter dated 16.1.2013 through BO GNE College, Gill stating that he has no complaint against the said person and he cannot entertain any correspondence in this regard. The second management witnesses Sh. V.P. Singh- Ex.A.G.M. appeared in the enquiry but shown his inability to give any evidence in the absence of written complaint by party and that the matter being 2 years old, he do not remember the details of the incident. Hence, I find that there is no written or oral evidence which could prove the allegations.

On the basis of enquiry proceedings, submissions of PO and above discussion, I find the allegations as Not Proved.

Summary of Findings on Allegations” *On the basis of foregoing, my findings on allegations are summarized as under:-*

<i>Allegation No.</i>	<i>Findings</i>
<i>1 and 2</i>	<i>Not Proved</i>

Findings on charges: *The CSO has been charged as*

stated in terms of Clause 3(1) read with Clause 24 of Punjab and Sind Bank Officer Employees (Conduct) Regulations 1981, as amended from time to time. The above charges against CSO are based on the above stated allegations. As the allegations against CSO stand not proved from my findings and so the charges leveled vide Charge Sheet dated 30.9.2011 also stand not proved against CSO.”

Annexure P-7 is the order dated 13.6.2013 passed by the punishing authority. The operative part of the order dated 13.6.2013 (Anneuxre P-7) reads as under:-

“On further perusal of these counter comments I note that no fresh facts have been put forth by CSO in his defence which could in any way prove his innocence. Though the direct evidence could not be produced as main witness (complainant) had shown his unwillingness to appear in enquiry but the circumstantial evidence are there such as the issuing of Charge Sheet by the previous Zonal Manager (DA) to whom the party made the verbal complaint, transpires the probability of existence of such verbal complaint against the CSO. As such, the objections of CSI that the findings of DA are merely bases on suspicion/assumption, surmise and conjecture do not hold any ground. As all the finer details of the complaint could not be ascertained, the DA held the allegations/charge are partially proved against the CSO.

Considering the nature of charge, the defence, the

relevant record and the preponderance of probability, aggravating and extenuating circumstances, now I am of the considered opinion that the penalty of “reduction to lower stage in the time scale of his pay by 1 stage for 1 year without cumulative effect and not adversely affecting his pension,” will be appropriate.

I, therefore, hereby award the penalty of “reduction to lower stage in the time scale of his pay by 1 stage for 1 year without cumulative effect and not adversely affecting his pension,” as per clause 4(e) of Punjab and Sind Bank Officer Employees' (Discipline and Appeal) Regulations, 1981 (amended from time to time), to Sh. Harinder Pal Singh-Senior Manager, with immediate effect.”

Aggrieved against the said order, petitioner preferred an appeal and the same was dismissed by the Appellate Court vide order dated 21.10.2013 (Anneuxre P-9). The operative part of the said order reads as under:-

“I, being Appellate Authority, have perused and considered the relevant record pertaining to the case. I have also considered the contentions raised by the Appellant in his appeal. I have noted that party made a verbal complaint to the then Zonal Manager for which the then Zonal Manager issued a charge sheet containing this allegations which is proper evidence. Thus, his contention that charge sheet was issued without any evidence is not tenable. I have further noted that DA disagreed with the findings of Inquiry Officer and sent his report to the

Appellant for comments, but he failed to adduce any evidence to rebut the same. Keeping in view the preponderance of probability, the DA took lenient view and awarded him minor penalty.

In view of the above, I do not find any merit in the contentions raised in his appeal. There is no reason to interfere with the order passed by DA. The penalty order, passed by DA is hereby upheld and appeal is rejected.”

A perusal of the order Annexure P-7 reveals that the same has been passed on the basis of presumptions. The punishing authority was conscious of the fact that in the enquiry proceedings, charges levelled against the petitioner were not proved. However, the punishing authority took the view that since the charge sheet had been issued against the petitioner, it was evident that there was some verbal complaint in existence against the petitioner. Complainant had shown his unwillingness to appear in the enquiry proceedings. It is not a case where the bank had suffered any financial loss. It is a case where the complainant had levelled allegations that the petitioner had demanded some percentage of the credit facility advanced to the complainant. Since the complainant had not appeared during the enquiry proceedings, the allegations levelled against the petitioner that he had demanded some percentage of the credit facility advanced to the complainant, stood unproved. In these circumstances, there was no material with the punishing authority to have ordered the imposition of penalty on the petitioner. This aspect of the matter has not been considered by the Appellate Authority also. The Appellate Authority has also been influenced with the fact that

verbal complaint was made to Zonal Manager and charge sheet had been issued against the petitioner and the same was proper evidence. The view taken by the punishing authority as well as the Appellate Authority is perverse being based on no evidence.

Accordingly, this petition is allowed. Impugned orders dated 13.6.2013 (Annexure P-7) and 21.10.2013 (Annexure P-9) are set aside. Petitioner will be entitled to receive consequential benefits on account of setting aside of the impugned orders.

**(SABINA)
JUDGE**

January 12, 2016
Gurpreet