

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

101

RSA No. 5023 of 2012(O&M)

Date of decision:07.11.2016

Jaswant Singh

.... Appellant

Versus

Punjab and Sind Bank and another

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. K.S.Rekhi, Advocate for the appellant.

Mr.A.S.Kakkar, Advocate for respondent No.1.

P.B. Bajanthri, J. (Oral)

In the instant appeal the appellant has questioned the validity of trial court order dated 01.10.2010 and appellate court order dated 03.08.2012. The appellant while working as Clerk-cum-Cashier at Branch office Makhu now Ferozepur District, was charge sheeted for the misconduct in particular violation of clause 19.5(d), 19.5(j) and 19.7 (a) of bi-partite-settlement dated 19.10.1996. Alleged charge is that the appellant managed to steal the MT book bearing No. 568001 to 568100 and IBR pad from the store room and handed over the same to one Sh. Amrik Singh with the intention to fraud the bank. The other charge is that the petitioner remained absent from 11.11.1997 till he was placed under suspension. Charge sheet was filed on 29.12.1997 for which the appellant is stated to have submitted his explanation. Thereafter, the enquiry was held in which

alleged charges are proved. The disciplinary authority issued a show cause notice seeking explanation of the appellant. After receipt of the explanation, the disciplinary authority proceeded to impose the penalty of removal from service on 27.02.1999. The appellant has availed remedy of appeal before the appellate authority. Appeal resulted in confirming the order of removal from service. Thus, the appellant has filed suit for declaration before the trial court in respect of imposition of penalty of removal from service. The trial court rejected the appellant's suit on 01.10.2010. Appellant preferred an appeal before the appellate court. The appellate court rejected appellant's Civil Appeal no. 84 of 2010 on 03.08.2012. Thus, the present appeal has been filed.

2. Learned counsel for the appellant submitted that charge is that he had stolen MT and IBR books and handed over the same to Amrik Singh in order to fraud the Bank. No fraud has been played by the appellant. MT and IBR Books were not misused. The respondents Bank have not filed any criminal case so as to contend that it is a serious misconduct and there is no loss caused to the Bank. It was further submitted that admittedly he remained absent whereas the respondents have placed him under suspension and thereafter proceeded to initiate disciplinary proceedings which was concluded in imposing the penalty of removal from service. It was submitted that he had put in 17 years of service. Having regard to the charge levelled against the appellant, penalty of removal from service is too harsh penalty. Therefore, it was argued that if penalty of removal from service is modified to that of compulsory retirement, it would be fair having regard to the length of service read with charge. So also no misappropriation of bank money is involved so as to impose penalty of removal from service.

The same has not been appreciated by disciplinary and appellate authorities and both the trial court and appellate court while confirming the order of removal from service.

3. On the other hand, learned counsel for the respondents Bank vehemently contended that stealing of MT and IBR books are very serious misconduct in nature. Therefore, the appellant deserves to be removed from service. Hence, there is no infirmity in the order of removal from service. It was also contended that both the courts have given concurrent findings. Thus, no interference is called by this court.

4. Heard learned counsel for the parties.

5. Question for consideration in the present appeal is whether imposition of penalty of removal from service for the charge that the appellant has stolen MT and IBR books and for remaining absent, is disproportionate or not? The respondents Bank have not filed criminal case for stealing MT and IBR books. They had held departmental proceedings and charges levelled against the appellant that he has stolen MT and IBR books and remained absent till he was placed under suspension. Therefore, imposition of one of the major penalty of removal from service would be too harsh for the reasons that after stealing MT and IBR books, no fraud has taken place and the same was not misused so as to contend by misusing there was misappropriation of money etc. That apart, the appellant remained absent for few days.

6. Having regard to the fact that appellant had rendered 17 years of service, imposition of penalty of removal from service would be too harsh. Therefore, imposition of penalty of removal from service required to be modified. This court has no power to modify the penalty for the reasons

that this court cannot act as disciplinary authority or appellate authority.

7. Disciplinary and appellate authorities' orders and trial court and appellate court orders are set aside.

8. The penalty is too harsh, the respondent-disciplinary authority is directed to re-examine the matter insofar as modification of penalty of removal from service to that of compulsory retirement within a period of 4 months from today and to pass order. It is made clear that the appellant is not entitle to any interest on the retiral benefits if the disciplinary authority modifies the penalty of removal from service to that of compulsory retirement.

9. Appeal stands disposed of.

07.11.2016

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons Yes/No

Whether Reportable: Yes/No