IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

431 **CWP-1782-1998 (O&M)**
Date of decision:22.09.2017

P.K.Khanna

....Petitioner

Versus

State Bank of India and another

` .... Respondents

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

Present: Mr. Rajvir S. Sihag, Advocate for the petitioner.

Mr. Kapil Kakkar, Advocate for the respondents.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioner has challenged the validity of the order dated 20.03.1989 (Annexure P-5), charge sheet dated 03.02.1994 (Annexure P-9), punishment order dated 08.02.1995 (Annexure P-12), appellate authority's order dated 01.07.1995 (Annexure P-13) and reviewing authority's order dated 19.02.1997 (Annexure P-14).

2. Petitioner was posted in the respondent Bank at Panjab University Branch, Chandigarh as Assistant Manager (Cash) on 20.03.1989. He had protested posting him as Assistant Manager (Cash) on 30.06.1989 on the score that posting him with reference to holder of the post read with circular of the Bank, respondent bank cannot post petitioner to the post of Assistant Manager (Cash). Thereafter, he remained absent from 23.04.1989 till issuance of chargesheet dated 03.02.1994. The respondents initiated disciplinary proceedings by framing two charges. One charge is for disobeying the lawful orders of the bank and posting him as Assistant Manager (Cash) at Panjab University, Chandigarh Branch. Other charge is relating to remaining unauthorized absent from 23.04.1989. The petitioner is stated to have submitted his reply to the charge-memo. Respondent-Bank being dissatisfied with the petitioner's reply proceeded to hold inquiry proceedings against the petitioner. Thus, inquiry report was submitted to the disciplinary authority holding that the charges levelled against the petitioner were proved. The General Manager who has initiated disciplinary proceedings has formed an opinion that for the purpose of imposing a particular penalty of compulsory retirement is vested with the Chief General Manager (Appointing authority). Therefore, he transmitted the papers to the Chief General Manager on 24.01.1995 while assigning gist of the case from the date of initiation of charge memo till receipt of the inquiring officer's report and petitioner's reply on the inquiring officer's report. On 24.01.1995 itself the Chief General Manager (Appointing authority) proceeded to pass order while imposing the penalty of compulsory retirement. Feeling aggrieved by the order of disciplinary authority, petitioner preferred an appeal before the appellate authority. Appellate authority while exercising power under Rule 67 of the State Bank of India Officers' Service Rules 1992 (for short 'Rules, 1992') modified the penalty from compulsory retirement to that of removal from service under Rule 67(g). Thereafter, petitioner preferred the review application before the reviewing authority.

The reviewing authority affirmed the order of the appellate authority. Hence the present petition.

3. Learned counsel for the petitioner submitted that disciplinary authority was not permitted to impose the penalty of compulsory retirement in view of Note II of Rule 67. It was further submitted that disciplinary authority has violated proviso II to Rule 68(i) so also proviso II to Rule 68 (7)(ii). Insofar as violation of Rule 68(7)(ii) he relied on Supreme Court decision reported in 2009(7)SLR 347 (para 2) titled as ***State Bank of India and others versus Ranjit Kumar Chakraborty and another***. It was also pointed out that disciplinary authority/appointing authority-Chief General Manager once he has exercised the power under Section 68(7) to impose penalty of compulsory retirement on 24.01.1995, he had exercised the power once again on 08.02.1995 imposing the very same penalty (Annexure P12). Thus, Chief General Manager exceeded his jurisdiction.

4. Appellate authority while modified the penalty of compulsory retirement to that of removal from service under Rule 67(g). Mandate of the Rule has not been followed to the extent that whenever appellate authority modifies the penalty or enhancing the penalty, employee or official of the respondent Bank is entitled to show cause notice under Rule 69(2) (ii). It was further submitted that reviewing authority has failed to appreciate the legal issues in para 4 of the reviewing authority's order. Merely reiterated the appellate authority's view to the extent that compulsory retirement and removal from service are one and the same penalty. Therefore, there is reasoning in support of imposing penalty of removal by the appellate

authority. In view of the aforesaid legal issues the action of the disciplinary authority in imposing penalty of compulsory retirement till order passed by the reviewing authority are in nullity.

5. Per contra, learned counsel for the respondents vehemently argued having regard to the conduct of the petitioner that he is an officer of Scale II. He is bound to discharge the duties of the post wherever he is posted including the post of Assistant Manager (Cash). That apart he remained unauthorized absent from 23.04.1989 to 03.02.1994. It was further submitted that petitioner has raised legal issues in the present writ proceedings which is impermissible as he has not urged legal issues before the disciplinary authority, appellate authority and reviewing authority. Thus the petitioner has not made out a case so as to interfere with the impugned orders passed by various authorities. Learned counsel for the respondents further submitted that Note II to Rule 67 of Rules, 1992 are not part and parcel of the original rules. Therefore, petitioners reliance on aforesaid provision is not tenable.

6. Heard learned counsel for the parties.

7. Perusal of the records, it is evident that the petitioner has committed serious misdeeds for remaining unauthorized absent from 23.04.1989 till 03.02.1994 the date on which charge-sheet was issued. He being officer he should be a model to other staff of the Bank. At the same time, one cannot ignore the relevant rules which are abide by the respondent-Bank while initiating and concluding the disciplinary proceedings. The petitioner's contention that while imposing the penalty of

compulsory retirement, disciplinary authority has not taken Note II to Rule 67 so as to compulsory retirement penalty is not attracted. Therefore, there is non-application of mind by the disciplinary authority/appointing authority. Learned counsel for the respondents submitted that Note II to Rule 67 is not part and parcel of Rules it is a private publication. In other words, in the original rules, there is no mention of Note-II. Consequently, the petitioner's contention that disciplinary authority has not applied mind with reference to petitioner's service read with imposition of compulsory retirement is hereby rejected. Proviso to Rule 68(1) and proviso to Rule 68 (7)(ii) it is crystal clear from the order of disciplinary authority that the aforesaid provisos of Rule 68 has not been followed. In fact petitioner's contention is supported by ***Ranjit Kumar Chakraborty's*** case (supra). Therefore, on this count itself the action of imposing the penalty of compulsory retirement on the petitioner by the appointing authority is liable to be set aside. Further the contention of the petitioner that appointing authority once again exercised the power to impose the penalty of compulsory retirement on 08.02.1995 is without authority of law therefore, on this count the order dated 08.02.1995 (Annexure P12) is liable to be set aside. Appellate authority has modified the penalty of compulsory retirement to that of removal from service while invoking Rule 67(g). Rule 69(2)(ii) specifically provides for any enhancement of penalty by the appellate authority. He is bound to issue a show cause notice to the aggrieved person. The appellate authority is of the view that penalty of compulsory retirement and removal from service are one and the same.

Therefore, question of issuance of show cause notice and complying Rule 69 (2)(ii) is not attracted. It is to be noted that if an employee is retired compulsorily he is entitled for certain monetary benefits from his employer whereas, if an employee is removed from service, he is not entitled for single rupee. The penalty differs from 'Dismissal' or 'Removal from service' or 'Compulsory Retirement' in regard to retirement benefits. While dismissal or removal from service entails forfeiture of past service and deprivation of retirement benefits (except grant of compassionate allowance on humanitarian grounds, in deserving cases If statutory rules or regulation provides for it), the person on whom the penalty of 'compulsory retirement' is imposed remains entitled to the proportionate pension on the basis of the service rendered by him/her. There is also no bar to his/her re-employment. Therefore, penalty of removal from service is higher penalty than the compulsory retirement even though both penalties are major penalties. Consequently, petitioner was entitled to notice under Rule 69(2)(ii). On this count appellate authority's order is liable to be set aside. Consideration of reviewing authority's order is concerned, it is not a speaking order. The petitioner has specifically taken number of contentions before the reviewing authority. Therefore, non-consideration of the petitioner's contentions before the reviewing authority there is non-application of mind by the reviewing authority. Accordingly, reviewing authority's order is also liable to be set aside. Perusal of the disciplinary authority's order, it is evident that there is no consideration of the petitioner's contention on inquiring officer's report. In fact, Chief General Manager-appointing authority has not even made reference to the petitioner's plea on inquiry officer's report.

8. In view of these lacunas and violations of various provisions of Appeal Rules, 1992 punishment order dated 08.02.1995 (Annexure P-12), appellate authority's order dated 01.07.1995 (Annexure P-13) and reviewing authority's order dated 19.02.1997 (Annexure P-14) are hereby set aside. CWP stands allowed.

9. In view of quashing of the above orders petitioner is entitled for all monetary benefits. The same shall be calculated and disbursed to the petitioner within a period of 6 months from today.

(P.B.BAJANTHRI)
JUDGE

22.09.2017
pooja saini

Whether speaking/reasons Yes/No

Whether Reportable: Yes/No