

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-13996-2012 (O&M)
Date of decision: 01.03.2017

Ram Mehar Singh Chahal

.....Petitioner

versus

Punjab National Bank and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Parveen Gupta, Advocate for the petitioner
Mr.Saurav Verma, Advocate
and Mr.Akash Soni, Advocate for the respondents

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ? **yes***
- 2. To be referred to the Reporters or not ? **yes***
- 3. Whether the judgment should be reported in the Digest? **yes***

Kuldip Singh, J.

Petitioner has impugned the order dated 17.2.2011 (Annexure P4), passed by the disciplinary authority, vide which major penalty of compulsory retirement was imposed upon the petitioner under Regular 4(h) of the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977 (in short, the Regulation 1977). Also impugned order dated 31.10.2011 (Annexure P6), passed by the appellate authority, vide which appeal filed by the petitioner was dismissed as well as order dated 30.4.2012 (Annexure P8), passed by the reviewing authority, vide which review petition filed by the petitioner was dismissed.

Petitioner while was working as a Deputy Manager in Punjab National Bank Jind was issued a charge sheet dated 28.3.2009, wherein two charges were leveled against him. Charge No.1 was regarding collecting of Rs.1,30,000/- on 26.4.2006 as recovery from one borrower Ajaib Singh son

of Khajan Singh and others against their tractor loan and not depositing the same with the branch on the same day i.e. On 26.04.2006 or on the next day. However, he got the same deposited on 29.4.2006 through the borrower only when it came to the notice of the Branch Manager when the borrower visited the branch for obtaining No Dues Certificate with details of mortgaged land. Charge no.2 was regarding issuing of letter of satisfaction i.e. No Dues Certificate to the borrower on 26.4.2006 under the signatures of the Manager BO: Anta, for which he was not authorized. Petitioner submitted the reply. However, the same was found to be unsatisfactory and inquiry was initiated. The inquiry officer submitted the report dated 30.3.2010 (Annexure P1), vide which inquiry officer held that charge no.1 was “not proved”, whereas charge no.2 was recorded as “proved”. However, the disciplinary authority disagreed with the findings on charge no.1 also, vide disagreement note dated 9.8.2010 (Annexure P2) and issued a show cause notice to the petitioner. Petitioner submitted the detailed representation on 20.8.2010 (Annexure P3). However, according to petitioner, without considering the reply, the impugned order of punishment dated 17.2.2011 (Annexure P4) was passed under Regulation 4(h) of the Regulation 1977. The appellate authority without applying its mind and without considering various vital aspects, dismissed the appeal vide order dated 31.10.2011 (Annexure P6). Similarly, the reviewing authority without applying its mind, dismissed the review petition on 30.4.2012.

According to the petitioner, disagreement note by the disciplinary authority regarding charge no.1 is totally contrary to the Rule 7 (2) of the Regulation 1977. The report of handwriting expert produced by the department was believed and handwriting expert produced by the

respondents was not relied upon. Therefore, the findings of the inquiry officer that charge no.2 is “proved” are contrary to the record and liable to be quashed and consequently punishment order, followed by the orders of appellate authority and reviewing authority are also liable to be quashed.

In the written statement, the respondents took the plea that the petitioner was involved in several cases of misconduct and he has been punished several times. Petitioner was earlier served with the charge-sheet and was “compulsorily retired” vide order dated 13.12.2003 (Annexure R1) on the basis of charge sheet dated 30.5.2002 but the punishment order was subsequently modified by the appellate authority to a major penalty of “reduction to the initial stage in the time scale of pay for a period of five years” vide order dated 14.10.2004. Thereafter, the petitioner did not mend his ways and he was again served with a charge sheet dated 3.2.2006, followed by disciplinary proceedings and was ultimately punished vide order dated 11.8.2006 (Annexure R2), whereby punishment of “withholding of promotion for period of one year” was imposed. Therefore, track record of the petitioner is not good.

On merits, it was stated that charge nos.1 and 2 are interlinked and if charge no.2 is proved, charge no.1 being interlinked, is also rightly held to be proved vide disagreement note. The money was unauthorizedly kept by the petitioner from 26.4.2006 after receiving the same from the borrower and on 29.4.2006 the same was got deposited through the borrower when the borrower made a complaint on 29.4.2006 to the Branch Manager when he visited the branch for obtaining no dues certificate with regard to his mortgaged land. Petitioner has issued a letter of satisfaction of dues i.e. No Dues Certificate to the borrower on 26.4.2006 under the signatures of the

Manager BO: Anta, for which he was not authorized. He was rightly held guilty by the inquiry officer. During inquiry, Shri S.K.Gupta (MW-II) was produced, who stated that no dues certificate was shown to him and he was surprised to see it. He categorically denied to have signed or issued such letter. He further stated that handwriting on the no dues certificates appears to be the handwriting of the petitioner. Petitioner and Shri S.K.Gupta had worked together at branch office Safidon.

During the inquiry, the petitioner had produced affidavit of Ajaib Singh that he had not paid any amount to the petitioner on 26.4.2006 but the petitioner failed to produce said Ajaib Singh during the course of inquiry to prove the said affidavit. Complaint dated 26.4.2006 was written by the complainant himself against the petitioner. It is clear that the petitioner had won over the complainant later on and on account of the said fact, he cannot be absolved from his liability. It was stated that the representation of the petitioner was duly considered and the impugned order was passed after considering the entire facts and circumstances. It was stated that the petitioner himself manipulated the deposit of Rs.1,30,000/- by Ajaib Singh on 29.4.2006. Inquiry officer had drawn the right conclusion.

I have heard learned counsel for the parties and have also carefully gone through the file and also the written arguments submitted by both the parties.

A perusal of the impugned order shows that allegations against the petitioner were that he received Rs.1,30,000/- from one Ajaib Singh borrower on 26.4.2006 on account of tractor loan and did not deposit the same with the bank on the same day or the next day. On 29.4.2006, said borrower Ajaib Singh visited the branch office to get no dues certificate with

the details of mortgaged land. It was only then that it came to the notice of the branch manager, where, Ajaib Singh filed a written complaint. However, according to the allegations against the petitioner, the petitioner allegedly won over Ajaib Singh and got the said sum of Rs.1,30,000/- deposited from Ajaib Singh on 29.4.2006. Charge no.2 is that he issued a satisfaction certificate on behalf of Branch Manager: Anta.

Powers of the High Court in exercise of jurisdiction under Articles 226/227 of the Constitution of India, for interference in the departmental inquiries are well settled.

In Union of India and others vs. P.Gunasekaran, 2015(2) SCC

610, the Hon'ble Apex Court laid down the following principles:-

Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;*
- b. the enquiry is held according to the procedure prescribed in that behalf;*
- c. there is violation of the principles of natural justice in conducting the proceedings;*
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the*

evidence and merits of the case;

e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i. the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

(i). re-appreciate the evidence;

(ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii). go into the adequacy of the evidence;

(iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience.

The same view was reiterated by the Hon'ble Apex Court in High Court of Gujarat vs. Hitendra Vrajlal Ashara and another, 2015(2) SCT 89.

In State Bank of India and others vs. Ramesh Dinkar Punde, 2006(4) SCT 61, it was held by the Hon'ble Apex Court that disciplinary proceeding is not a criminal trial and standard of proof required is that of preponderance of probability and not by proving beyond reasonable doubt.

Therefore, the High Court cannot act as an appellate authority and interfere

by re-appreciating the evidence.

Learned counsel for the petitioner has argued that the findings of the disciplinary authority in recording disagreement note, that the charge no.1 is also proved being interlinked are illegal. It is further argued that from the inquiry, even charge no.2 is not proved. He further argued that the report of the expert produced by the department was wrongly relied upon and the report of the expert produced by the petitioner was wrongly discarded. Expert produced by the department was not relied upon by the Courts in several cases. In this regard reliance has been produced on Jarnail Singh Lamba vs. Life Insurance Corporation of India through its Chairman, Yogakshema, Jeevan Beema Marg, Mumbai 21 and others, 2012(1) SCT 224.

Learned counsel for the petitioner has also relied upon the authority in Punjab National Bank vs. Kunj Behari Misra, 1998(3) SCT 833, wherein while discussing the Regulation 1977, it was held that on serving the charge sheet, full opportunity is required to be given to the delinquent official to prove his innocence. It was observed by the Hon'ble Apex Court as under:-

16. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade

the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

Regarding disagreement note, it has been contended that the evidence should have been discussed in the dissenting note to disagree with the findings. Therefore, disagreement note could not be relied upon. Reliance has been placed upon the Division Bench authority of this Court in R.L.Jakhu vs. Union of India and others, 2011(2) SCT 487.

Learned counsel for the petitioner has further argued that the representation made by the petitioner against the said inquiry report was not considered. All the contentions raised in the inquiry report and the dissenting note were not considered. Therefore, the impugned order of punishment is not sustainable. Reliance is placed on a Division Bench authority of this Court in P.K.Khanna vs. National Fertilizers Ltd. and another, 2005(2) SCT 642.

After considering the rival contentions of both the parties and also going through the written arguments submitted by both the parties, I am of the view that the facts of each case are different. In the present case, both the charges are interconnected. Petitioner is alleged to have collected a sum of Rs.1,30,000/- from one borrower Ajaib Singh and issued a satisfaction certificate i.e. No Dues Certificate to him on behalf of Manager BO: Anta. He kept the money with him till 29.4.2006. When said Ajaib Singh borrower approached the branch manager for issuance of no dues certificate with the details of mortgaged land, then it was detected that the

money has not been deposited with the bank. Ajaib Singh made a written complaint which is stated to be on the letter head of the bank. Thereafter, the petitioner appears to have acted swiftly and apparently won over the borrower. The said money was deposited in the bank under the signatures of the said Ajaib Singh.

Contention of learned counsel for the petitioner, that the complaint was procured one, is without force. Generally, when a person comes to the bank for such a work, he does not carry papers with him and many times papers are borrowed from the said office. Therefore, there is nothing wrong on the part of the Bank Manager to supply papers to Ajaib Singh to give complaint in writing. Such complaint is insisted upon when somebody makes allegations that he had paid the money and the same has not been deposited in his account. Ajaib Singh or the Manager has no ill will against the petitioner. Petitioner issued a no dues certificate. For this purpose, the management has examined the concerned officer Shri S.K.Gupta who has testified that he did not authorize the petitioner to sign the said certificate and that the handwriting on the said certificate is that of the petitioner. Both of them had worked together at Safidon branch.

I have gone through the dissenting note (Annexure P2). It is not the requirement of the law that a detailed discussions should be made while disagreeing on the findings on a particular charge. In the present case, the charges were interconnected. It was found that the petitioner issued a satisfaction letter without any authority, in which it was recorded that the bank has received Rs.1,30,000/- from the borrower and no dues are there. Charge no.1 was that the petitioner had received Rs.1,30,000/- from the borrower. Therefore, charge no.1 is proved from the handwriting which was

the subject matter of charge no.2. The handwriting was duly proved. The standard of proof in the criminal trial and departmental proceedings is different. When the borrower approached the Bank Manager that he has already paid the money to the petitioner, he certainly will not bring another equal sum for depositing the same in the bank. Therefore, the findings of the inquiry officer and the disciplinary authority are correct that the complainant Ajaib Singh was won over by the petitioner and petitioner got the said amount deposited on 29.4.2006 under the signatures of said borrower Ajaib Singh. He even procured an affidavit from Ajaib Singh which is a further misconduct. However, Ajaib Singh has never appeared to stand by his affidavit.

The plea of learned counsel for the petitioner is that Ajaib Singh was not examined by the department. I am of the view that it is the quality of the evidence and not the quantity which matters. In the departmental proceedings, the findings are recorded on the basis of preponderance of probability and in this case, the inquiry officer and the disciplinary authority came to the conclusion that the petitioner had in fact extracted Rs.1,30,000/- from the borrower Ajaib Singh on 26.4.2006 and issued a satisfaction certificate without any authority. He did not deposit the amount in the bank till 29.4.2006. The mere fact that the disciplinary authority gave brief reasons is no ground to discard dissenting note. Disciplinary authority in the dissenting note has recorded that charge no.2 regarding issuance of no dues certificate to borrower Ajaib Singh proves the fact that the petitioner has received Rs.1,30,000/- from Ajaib Singh. I am of the view that this brief reasoning is sufficient for recording dissenting note. Department followed the procedure. Inquiry officer was appointed and both the parties were given

opportunity to lead evidence. Even though, the science of handwriting is not exact science, it was for the inquiry officer to see as to whether writing is proved or not. For that purpose, inquiry officer has not only relied upon the expert evidence produced by the department and duly controverted by the respondents but also on the evidence of other witnesses of the department, who identified the handwriting of the petitioner, coupled with the circumstances that the complainant had approached the Branch Manager along with the said writing claiming that the petitioner had accepted Rs.1,30,000/- from him and issued satisfaction certificate. Therefore, the writing is duly proved even from the remaining evidence led by the department and was correctly relied upon. This Court cannot replace findings of the inquiry officer with its own findings.

So far as representation of the petitioner is concerned, I have gone through the same. It is not the law that each and everything stated in the representation must be discussed in detail. The representation/ reply to the inquiry report (Annexure P3) is running into 27 pages. The punishment order (Annexure P4) shows that the contents of the said representations were considered and discussed and a detailed order has been passed after taking into consideration the evidence led by the parties. Therefore, there is no illegality or infirmity in the impugned punishment order.

Learned counsel for the respondent department has tried to impress upon the previous conduct of the petitioner. However, I am of the view that in the charge sheet there was no charge regarding the previous conduct of the petitioner. Therefore, same cannot be considered by this Court. In any case, the impugned punishment order dated 17.2.2011 (Annexure P4) is found to have been passed in accordance with rules and

sound reasoning. Appellate authority has also considered the plea of the petitioner and dismissed the appeal vide order dated 31.10.2011 (Annexure P6) and similarly, reviewing authority also dismissed the review petition vide order dated 30.4.2012 (Annexure P8). There is no illegality or infirmity in the procedure adopted by the department. No principles of natural justice were violated.

Keeping in view the serious allegations against the petitioner, there is no illegality or infirmity in imposing the penalty of compulsory retirement. Accordingly, I do not find any merit in the present writ petition. The same is accordingly dismissed.

01.03.2017*gk***(Kuldip Singh)
Judge**

Whether speaking/ reasoned:

Yes

Whether Reportable:

Yes