IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-18207-2017 (O&M)
Date of Decision:-04.10.2017.

Surjit Singh

.....Petitioner

Versus

The Punjab National Bank and others

......Respondents

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

****

Present: Mr. R.K. Arora, Advocate for the petitioner.

Mr. Bhushan Bhatia, Advocate for the respondents.

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P.B. BAJANTHRI, J. (Oral)

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With the consent of counsel for the parties, main matter is taken up for hearing today itself.

In the instant writ petition, petitioner has challenged the validity of the order dated 21.07.2017 (Annexure P-15) which is a communication relating to examination of petitioner's reply to the charge memo. In view of the later development to the extent that the respondents-Bank have passed order on 13.09.2017, in view of latter development challenge to the order dated 21.07.2017 do not survive for consideration.

Petitioner has challenged the validity of charge-sheet dated 29.01.2016 (Annexure P-2) on the ground that identical allegations are subject matter of criminal proceedings, therefore, as long as criminal proceedings are not finalized the respondents cannot proceed with the initiation of departmental inquiry pursuant to the charge-sheet dated 29.1.2016. Court can interfere in respect of charge memo or charge-sheet only if there is a *mala fide* or incompetency. The petitioner has also not pointed out that the charge sheet filed in the criminal proceedings and the charge-sheet in the departmental proceedings are identical. Further materials like list of witnesses and list of documents are identical so as to stay further proceedings to the charge-sheet dated 29.1.2016 till filing of charge-sheet in the criminal proceedings. Accordingly, challenge to the charge sheet dated 26.01.2016 is declined.

Petitioner has challenged rejection of appointment of an Inquiring Officer on the ground of bias and *mala fide* dated 4.11.2016 (Annexure P-8) and further rejection of his appeal dated 21.12.2016 (Annexure P-12). Petitioner has not impleaded Inquiry Officer by name, therefore, question of interference with the rejection of petitioner's claim for change of Inquiry Officer dated 4.11.2016 (Annexure P-8) and 21.12.2016 (Annexure P-12) are hereby declined.

Petitioner challenged the decision of the respondents Bank in not permitting him to engage services of a legal practitioner in the inquiry and its rejection on the appeal side dated 12.9.2016 and 20.10.2016 (Annexure P-4 and P-6, respectively).

Learned counsel for the petitioner submitted that having regard to the charges leveled against the petitioner, which are serious in nature. Further on identical charges, the respondents-Bank have launched criminal proceedings. Having regard to the seriousness of the charges which requires legal practitioner's assistance in the inquiry, in this regard, petitioner with reference to Regulation No.44 of Punjab Gramin Bank (Officers and Employees) Service Regulations, 2010, submitted application. The same has been rejected. Consequently, appellate authority also declined to permit the petitioner to engage legal practitioner in the inquiry.

On the other hand, learned counsel for the respondents submitted that decline or rejection of the petitioner's application for engaging a legal practitioner in the inquiry initiated pursuant to the charge sheet dated 29.01.2016 is in accordance with law. The presenting officer is not a legal practitioner. Therefore, there is no infirmity in the order dated 12.9.2016 and 20.10.2016 and no interference is called for.

Heard learned counsel for the parties.

Article of charges reads as under:-

"ARTICLE I:

Sh. Surjit Singh Officer (U/S) misappropriated the credit balance lying in the KCC account of the deceased borrower by fraudulently passing payment purportedly in the name of the deceased borrower/verifying the payment and withdrawing the same in cash.

ARTICLE II:

Sh. Surjit Singh Officer (U/S) misappropriated the credit balances lying in the KCC accounts of the deceased borrowers by withdrawing the same in cash by fraudulently obtaining the signatures of the legal heirs of the deceased borrowers on the KCC withdrawal vouchers without their knowledge purportedly showing them as the beneficiaries. The legal heirs have denied having received the payments.

ARTICLE III:

Sh. Surjit Singh Officer (U/S) indulged in malpractice by closing loan account to the debit of income head of the branch. Physical voucher was not prepared.

ARTICLE IV:

Sh. Surjit Singh Officer (U/S) indulged in large scale unethical and dishonest activities breaching the trust of the public by getting collected from the borrowers, amounts excess than actually due from them at the time *of full and final adjustment of their loan accounts and later on misappropriating them. In certain instances he also misappropriated subvention amount to KCC borrowers by crediting eligible/ineligible subvention amount before his act of misappropriation.*

ARTICLE V:

Sh. Surjit Singh Officer (U/S) exposed the bank to potential risks by releasing mortgaged properties of the borrowers without closing their loan accounts on the relevant day.

ARTICLE VI:

Sh. Surjit Singh Officer (U/S) jeopardized bank interests by not closing in the system the previously financed KCC limits of the borrowers before/at the time of financing them fresh limits."

Perusal of charges, it is evident charges are serious in nature and also initiation of inquiry is for imposing major penalty of dismissal from service or compulsory retirement. The petitioner's livelihood is at stake. Therefore, in order to give fair opportunity in the inquiry, petitioner is entitled to engage legal practitioner. Perusal of Annexures P-4 and P-6, there is no discussion relating to seriousness of the charge read with the launching of criminal proceedings except stating that Presenting Officer is not legally trained, therefore, rejection is without application of mind. The respondents while declining permission to engage a legal practitioner referred to examination of Regulation 44 of the Punjab Gramin Bank (Officers and Employees) Service Regulations, 2010 and so also NABARD guidelines. If the NABARD guidelines are taken into consideration, it is evident from item No.10 (f) in respect of engaging defence representative that an employee who is charged for gross misconduct involving criminal case is entitled to engage a legal practitioner. Relevant clause reads as under:-

> *"If an employee is charged for a gross misconduct involving criminal offences like fraud, mis-appropriation embezzlement of accounts, forgery, theft, etc. and if he so requests to be permitted to be represented by a lawyer in the enquiry, the Enquiry Officer/Disciplinary Authority may notwithstanding the prohibition contained in Sub-Reg. (3) of Reg. 30 of the staff Service Regulations, consider such requests in the light of the facts and circumstances of the case and consider allowing the delinquent official to be represented by a legal practitioner or any other outsider of the choice of the delinquent. In such cases, the Bank also may consider getting its case represented by a legally trained person or a legal practitioner or a Law Officer of the Bank.*
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> *As to the question whether in a given case the charges are of a serious and of a complex nature involving criminal offences or not has to be decided by the Enquiry Officer/Disciplinary Authority on the basis of the facts and circumstances of the case and if necessary, the legal Advisor of the Bank may be consulted.*
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> *The Role of the defence representative is to present the charge sheeted employee's case, examine and cross-examine witnesses, raise objections to procedural lacunae, if any, and sum up the case on behalf of the employee. The representative should not be allowed to give oral evidence on behalf of the charge sheeted employee nor should he be permitted to answer questions put by the Enquiry Officer to the charge sheeted employees. In the case of any enquiry against an officer, the Disciplinary Authority may at his*

discretion allow the officer to be defended by another officer of the Bank."

The appellate authority has not assigned reasons as to why the petitioner is not entitled to engage legal practitioner as a defence representative. Thus, there is total non-application of mind by the appellate authority while passing order dated 20.10.2016 with reference to the petitioner's grievance to engage legal practitioner. Accordingly, orders dated 12.09.2016 and 20.10.2016 (Annexures P-4 and P-6, respectively) are set aside. The respondents/Inquiring Officer are hereby directed to permit the petitioner to engage legal practitioner to defend his case pursuant to the charge-sheet dated 29.1.2016. The petitioner and his legal practitioner should cooperate in deciding the inquiry. Even the respondent-Bank are at liberty to appoint Presenting Officer with legal background.

With the above observations, petition stands allowed in part.

At this stage, learned counsel for the petitioner submitted that date of inquiry has been fixed on 09.10.2017. The Inquiring Officer is requested to re-fix the date of inquiry from the initial stage on 25.10.2017 and commence inquiry proceedings from the initial stage.

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In view of the order passed in main matter, the instant CM do not survive for consideration.

Accordingly, CM stands disposed of.

(P.B. BAJANTHRI)
JUDGE

October 04, 2017.
sandeep

Whether speaking/reasoned:- Yes / No

Whether Reportable:- Yes / No.