IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 9394 of 2015 (O/M)
Date of decision : 11.5.2017

A.K. Tangri .... Petitioner (s)

Versus

Oriental Bank of Commerce and another .... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Praveen Gupta, Advocate, for the petitioner.

Mr. Jagat Arora and Mr. R.N. Lohan, Advocates, for respondents.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J. (ORAL)

The petitioner was working as a General Manager with the Oriental Bank of Commerce (in short 'OBC') and superannuated on 30.9.2010, vide order dated 5.7.2010 (Annexure-P-1). After one year of the retirement, the petitioner was served with a chargesheet dated 7.10.2011 (Annexure-P-2). The petitioner challenged the said chargesheet dated 7.10.2011 by way of filing the writ petition i.e. CWP No. 10692 of 2012, titled as A.K. Tangri Versus Oriental Bank of Commerce and others, before this Court. The said writ petition was dismissed on preliminary hearing by this Court, vide order dated 1.11.2012 (Annexure-P-5) and this Court refused to interfere in the said chargesheet dated 7.10.2011 on the ground that the inquiry is already pending. Thereafter, the inquiry officer was appointed and the inquiry was initiated. In the inquiry, charge No. 1 was partly proved and charge No. 2 was proved. The competent authority i.e. the disciplinary authority, Chairman and Managing Director, vide order dated 23.7.2013 (Annexure-P-8), impose a cut of 20% on the monthly pension of the petitioner for a period of two years. The petitioner preferred an appeal against the said order dated 23.7.2013 (Annexure-P-8). The appellate authority, vide order dated 3.8.2014 (Annexure-P-10), dismissed the said appeal. Further, review before the reviewing authority was dismissed, vide order dated 17.1.2015 (Annexure-P-12). The petitioner has impugned all these orders in the present writ petition, stating that the orders are illegal and not in accordance with Regulation 43 of the Oriental Bank of Commerce (Employees) Pension Regulations, 1995, (in short 'Regulations of 1995') and are liable to be quashed. The mandamus has also been sought for grant of full pension to the petitioner without any cut.

In the written statement, respondents have taken the stand that under the said Regulations of 1995, the pension is subject to future good conduct and even the past irregularities/discrepancies can be looked into by the bank. It was stated that during the inquiry, full opportunity was given to the petitioner and the order has been passed in accordance with the law. The earlier writ petition of the petitioner challenging the said chargesheet dated 7.10.2011 was dismissed. It was further stated that the petitioner was found guilty of grave misconduct jeopardizing public funds of over Rs. 80 crores. Respondents justified the inquiry, findings and the orders passed by various authorities.

I have heard the learned counsels for both the parties and have also carefully gone through the record.

The punishment has been awarded under Regulation 43 of the Regulations of 1995. Regulation 43 of Regulations of 1995, under which action has been taken against the petitioner is reproduced as under :-

"43. Withholding or withdrawal of pension

The competent authority may, by order or in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specific period, if the pensioner is convicted of a serious crime or criminal breach of trust or forgery or acting fraudulently or is found guilty of grave misconduct ;"

Regulation 45 of the Regulations of 1995 is also reproduced as under :-

"45. Pensioner guilty of grave misconduct

In a case not falling under Regulation 44 if the Competent Authority considers that the pensioner is prima facie guilty of grave misconduct, if shall, before passing an order, follow the procedure specified in Oriental Bank of Commerce Officer Employees' (Discipline and Appeal) Regulations, 1982 or in Settlement, as the case may be."

The word 'grave misconduct' is defined as under :-

"(b) the expression "grave misconduct" includes the communication or disclosure of any secret official code or password or any sketch, plan, model, article, note, document or information, such as mentioned in Section 5 of the Official Secrets Act, 1923 (19 of 1923) which was obtained while holding office in the Bank so as to prejudicially affect the interests of the general public or the security of the State."

The perusal of the definition of word 'grave misconduct' shows that it was not exhaustive. Therefore, it will depend upon facts of each case whether the misconduct, as alleged against a retired employee, is a grave misconduct. It will also be necessary to look into the charges to find out that whether alleged acts falls in the definition of 'grave misconduct'. The petitioner was charged with the following two charges :-

> "Charge No. 1
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> Shri A.K. Tangri during his visit to Ahmedabad/Baroda as part of high level team, failed to critically examine the fact that branch had disbursed Rs. 80.61 crore in a single tranche based on 29 FAX messages received on 27.3.2009 from M/S Biotor Industries Ltd., Baroda, as it is evident that the disbursement was made in a hurry, without completing the laid down formalities. Though the deviations from terms of sanction were

> summarized by him in visit report dated 30.4.2009 placed before the competent authority, yet he preferred recommendations to the Competent Authority for post facto amendment in terms of sanction.
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> By his above acts Shri A.K. Tangri allegedly failed to discharge his duties with utmost devotion and diligence and thus violated Regulation 3(1) of Oriental Bank of Commerce Officer Employees (Conduct) Regulations, 1982 which read with Regulation "24" of the said Regulations constitute misconduct punishable under Oriental Bank of Commerce Officer Employees (Discipline and Appeal) Regulations, 1982.
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> Charge No. 2:
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> Sh. A.K. Tangri allegedly failed to independently cross verify particulars of any VLAs, as submitted by the Management Agent to the Bank, while carrying out verification exercise for the VLAs/Farmers of villages Jarod, Sarsa and Raghavpura on 16.4.09 and 17.4.09 by the high level team headed by him, in the account of M/S Biotor Industries Ltd. Subsequently, on re-verification, it was observed that all the VLAs of these 3 villages were found to be fake, as the concerned persons, whose names had been identified by the company as VLAs denied having availed any loan or executed any document for this purpose."

The inquiry report dated 24.12.2012 (Annexure-P-6) shows that regarding the first charge, the first part of the charge regarding 'failing to critically examine the fact that the branch had disbursed Rs. 80.61 crores in a single tranche', was found to be not proved. The only second part was proved whereby it was alleged that the petitioner had preferred recommendation to the competent authority for post facto amendment in terms of sanction. Regarding the second charge, it was found that high level team headed by the petitioner had visited villages Jarod, Sarsa and Raghavpura on 16.4.2009 and 17.4.2009 and failed to find out that VLAs of three villages are found to be fake. Though, it was found that the said high level team had visited and interacted with the villagers and the loan is found to have been disbursed. Charge No. 2 was found to be proved.

Sticking only to the law point, this Court is to determine as to whether the said charges fall in the category of 'grave misconduct', ? It is to be noted that to prove the 'grave misconduct', it must be grave nature of misconduct and not a normal misconduct. The petitioner served the bank for 37 years. The first part of the charge is that as a part of said high level team, the petitioner failed to critically examine the disbursement of Rs. 80.61 crores in single tranche. He summarized the visit report on 30.4.2009 and preferred recommendation to the competent authority i.e. Chairman and Managing Director for post facto amendment in the terms of sanction.

I am of the view that the said recommendations are part of the normal duties and may fall within the definition of 'conduct' and even cannot be called 'misconduct'. It was the view of the petitioner that the terms of sanction should be amended post facto. The said recommendations were not binding on the Chairman and Managing Director of the bank. Therefore, the petitioner was performing his normal duties. In his own wisdom, he thought it proper that post facto amendment in terms of sanction is required to be granted and he accordingly made recommendations. Therefore, the said conduct does not fall within the definition of 'misconduct', what to call of 'grave misconduct'.

Regarding the second charge, it has come out in the inquiry report that a team headed by the petitioner had visited three villages and interacted with the number of borrowers in the said three villages, who acknowledged payment in the bank account from the Management Agent. It is claimed that during the re-verification, the identities were found to be fake. It means that the team headed by the petitioner was not sharp enough to detect the fake identities. At the most, it can be called 'lack of competence' or 'lack of skill' to investigate the matter. However, this act also cannot be called a 'misconduct', what to call of 'grave misconduct'. Had the allegations been that the petitioner found out the fake identities and even then made a wrong report, then it could amount to 'grave misconduct'.

Now, coming to the impugned order dated 23.7.2013 (Annexure-P-8), it is found that in the order, the competent authority, while concluding, passed the following order :-

> "Considering all the facts of the case, evidence on record of inquiry and submissions of the CO as discussed hereinabove and commensurate with the gravity of proved misconduct against the CO in respect of articles of charges as aforesaid, I have decided to impose upon the CO the following penalty under Regulation 43 of Oriental Bank of Commerce (Employees) Pension Regulations, 1995.
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> "Withdrawal of 20% of monthly pension for a period of two years.
>
> The order shall come into force with immediate effect."

The order shows that the competent authority considering the gravity of proved 'misconduct' 'not misconduct', passed the order of withdrawal of 20% of the monthly pension for a period of two years. It shows that the disciplinary authority found it to be a 'misconduct' and not even 'grave misconduct', as required under Regulation 43 of the Regulations of 1995. Therefore, the disciplinary authority failed to appreciate the requirements of Regulation 43 of the Regulations of 1995 and also failed to see that the requirements of Regulation 43 of the Regulations of 1995 are not met with before passing the impugned order. Similarly, the appellate authority as well as the reviewing authority failed to appreciate whether the proved charges amount to grave misconduct or not ?

Now, this Court is to see that the disciplinary authority, punishing authority, as well as the reviewing authority acted in discharge of their duties and their failure to appreciate and conclude and consequently record the finding that it was a 'grave misconduct', can be attributed to 'lack of skill' or 'mis-appreciation'. Therefore, they stand at the same footing as the petitioner himself. If for these acts, a retired employee is to be punished, then the disciplinary authority, punishing authority and the reviewing authority have to meet the same fate.

In view of the foregoing discussion, I am of the view that from the proved charges, the requirements of Regulation 43 of the Regulations of 1995, are 'not met' to the extent that the alleged act is not proved to be 'grave misconduct', so as to attract Regulation 43 of the Regulations of 1995. Therefore, the impugned orders passed by the reviewing authority, the appellate authority and the punishing dated 17.1.2015, 3.8.2014 and 23.7.2013 (Annexures-P-12, P-10 and P-8 respectively), are hereby quashed. The present writ petition is allowed. Respondents are directed to release 20% pension, already deducted from the monthly pension of the petitioner, alongwith interest at the rate of 9% per annum. The arrears alongwith interest shall be released within two months from the date of receipt of certified copy of this order.

(KULDIP SINGH)
JUDGE

11.5.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes