

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

CWP-3853-1998

Date of Decision:22.01.2018

S.K. Jain

... Petitioner

Vs.

Bank of India and others

... Respondents

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

Present : Mr. Dhiraj Chawla, Advocate for the petitioner.

Mr. R.N. Lohan, Advocate for the respondents.

P.B. BAJANTHRI J. (Oral)

In the instant writ petition, petitioner has challenged the order of dismissal dated 22.10.1996 (Annexure P-4) and consequential order issued by the Appellate Authority dated 23.06.1997 (Annexure P-6). Further, he has sought for a direction to reinstate.

Petitioner was placed under suspension on 16.9.1988 on certain allegations for which inquiry was held by issuing charge-sheet on 5.10.1988. It has attained finality by imposing the penalty of reduction of pay by two stages and withholding of two increments. When things stood thus, petitioner was subjected to one more disciplinary proceedings. On 8.8.1994 charge-sheet was filed. It was concluded in imposing the punishment of dismissal from service. In the second inquiry, 11 charges were framed. Out of 11 charges, charge No.3 was not proved and some of the charges were partly proved. Petitioner has suffered orders before the appellate authority. Hence, the present petition.

Learned counsel for the petitioner submitted that as on the date of first inquiry initiated on 5.10.1988, certain allegations which were charge-sheeted in the second inquiry were existing. However, the same has not been taken into consideration as and when charge-sheet issued on

5.10.1988. Therefore, respondents cannot take note of the alleged allegations prior to 5.10.1988 in the subsequent proceedings. It was further submitted that a junior officer to the petitioner has been appointed as an inquiry officer and initiation of charge is at the behest of one Shri P.P. Abraham. He had grudge against the petitioner and it was also submitted that petitioner has rendered 32 years of service. Therefore, imposing major penalty of dismissal from service would be disproportionate to the alleged charges levelled against the petitioner.

Per contra, learned counsel for the respondents while resisting the petitioner's claim submitted that there is no prohibition under the regulation to initiate disciplinary proceedings relating to allegations prior to 5.10.1988 the date on which first inquiry held against the petitioner on certain allegations. Therefore, contention of the petitioner that in the second inquiry, allegations alleged prior to 5.10.1988 cannot be taken consideration is untenable. It was further submitted that even though petitioner has alleged that initiation of charge is at the behest of one Shri P.P. Abraham but he has not arrayed as respondent to the proceedings. Whenever mala fide alleged against a person, he should be impleaded as party. Quantum of penalty is concerned, it is evident that there were serious charges by a Branch Manager of Bank. Therefore, it is not a case for modification of penalty. Thus, petitioner has not made out a case so as to interfere with the penalty order and order passed by the appellate authority.

Heard learned counsel for the parties.

Petitioner was working as a Branch Manager with the respondent-Bank. He being responsible Branch Manager, he has not taken permission while taking second hand Maruti Van and similarly, purchasing

of a property in the name of petitioner's wife and further not giving account and disproportionate income during a particular period so also he has violated instructions of the Bank relating to clearance of cheque as well as advancing loan to various customers. Petitioner's contention that allegations prior to 16.9.1988 were required to be examined as part of 1st inquiry initiated on 5.10.1988. There is no prohibition under the regulation. Of course certain materials may not be available to the disciplinary authority's knowledge as on initiation of 1st inquiry. That apart there is no hurdle for initiation of inquiry in respect of allegations prior to 5.10.1988 in the year 1994. Insofar as appointment of inquiry officer who is junior to the petitioner is concerned, petitioner has not challenged the order of appointment of inquiry officer at the initial stage. Petitioner cannot contend that a junior officer was appointed as an inquiry officer later on. Disproportionate of penalty is concerned, it is to be noted that the petitioner has rendered 32 years of service. He was subjected to disciplinary proceedings on 5.10.1988 and it was concluded in imposing the penalty of reduction of pay by two stages and stoppage of two annual increments. The same has been accepted by the petitioner. In view of the conduct of the petitioner read with the fact that he was a Branch Manager imposition of penalty of dismissal from service with reference to the charges issued on 8.8.1994, petitioner has not made out a case so as to interfere with the penalty of dismissal from service. Supreme Court in the case of **Union of India and others v. P. Gunasekaran**; (2015) 2 SCC 610 held as under:

“12. 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, reappreciating even the evidence before the enquiry officer. The finding on Charge 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 Articles 226/227 of the Constitution of India, shall not venture into reappreciation 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.*

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate 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.”

Petitioner's case do not fall under any of the aforesaid clauses.

Accordingly, petition stands dismissed.

22.01.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**