IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

225 **CWP-19522-2015 (O&M)**
Date of decision:30.01.2018

Rajesh Kumar Sharma

....Petitioner

Versus

Oriental Bank of Commerce and others

.... Respondents

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

Present: Mr. Kshitij Sharma, Advocate for the petitioner.

Mr. Jagat Arora, Advocate for the respondents.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioner has challenged the order of the disciplinary authority dated 03.06.2015 and appellant authority's order dated 20.12.2014 (Annexures P10 and P7). Further he has challenged charge-sheet dated 07.03.2014 (Annexure P1). Petitioner while working as Senior Manager he was subjected to disciplinary proceedings based on the complaints of Sh. Vinod Kumar and Sh. Prabhjit Singh dated 13.08.2013 and 21.09.2013 (Ex. M1 to M5). The alleged charges are relating to failure to maintain secrecy of customers account etc. Petitioner had requested for furnishing preliminary inquiry officer's report submitted by Mr. R.K.Gupta, and Smt. Poonam Sachdeva. The same were not made available to the petitioner. Perusal of the list of witnesses it is evident that preliminary investigation officers like Sh.R.K.Gupta and Smt. Poonam Sachdeva were cited as witnesses whereas complainants like Sh. Vinod Kumar and Sh. Prabhjit Singh were not cited as witnesses. Sh. R.K.Gupta and Smt. Poonam Sachdeva have collected certain materials from Sh. Vinod Kumar and Sh. Prabhjit Singh against the petitioner for the purpose of holding disciplinary proceedings. In the inquiry, charges leveled against the petitioner were got proved. Thereafter, formalities of issuing of show cause notice and obtaining reply were completed thereby disciplinary authority imposed penalty of removal from service on 20.12.2014. Feeling aggrieved by the order of disciplinary authority petitioner preferred an appeal. Appellate authority has affirmed order of the disciplinary authority on 03.06.2015. Hence the present petition.

Learned counsel for the petitioner submitted that initiation of inquiry is based on complaint made by Sh.Vinod Kumar and Sh. Prabhjit Singh who are the customers of the respondent-Bank. Behind the back of the petitioner Sh. R.K. Gupta and Smt. Poonam Sachdeva collected materials and prepared preliminary investigation report. Based on these reports respondents have initiated disciplinary proceeding against the petitioner. Petitioner had requested for furnishing preliminary investigation report. Same was not made available to the petitioner and inquiry was proceeded. It was also submitted that authors of the complaints namely Sh.

Vinod Kumar and Sh Prabhjit Singh were not cited as witnesses and so also they have not been examined. It was also submitted that appellate authority has come to the conclusion that there were no preliminary inquiry report of Sh. R.K.Gupta and Smt. Poonam Sachdeva. Further he has confirmed order of the disciplinary authority. Therefore, there are lacuna in the disciplinary proceedings from the date of issuance of charge sheet.

Per contra, learned counsel for the respondent has not disputed relating to not citing Sh. Vinod Kumar and Sh. Prabhjit Singh as witnesses even though they were complainants. However, it was contended that based on Sh. R.K.Gupta and Smt. Poonam Sachdeva report has been taken into consideration for the purpose of determining the charges leveled against the petitioner were proved. Therefore, non-examination of Sh. Vinod Kumar and Sh. Prabhjit Singh may not be a hurdle for proceeding against the petitioner and imposing the penalty. Thus, petitioner has not made out a case so as to interfere with order of the disciplinary and appellate authorities.

Heard learned counsel for the parties.

Entire case of the respondent-Bank is that Sh. Vinod Kumar and Sh. Prabhjit Singh submitted complaints to the respondent-Bank against petitioner. The complaints were taken note of and preliminary investigation was conducted by Sh. R.K.Gupta and Smt. Poonam Sachdeva. Based on their report respondents proceeded to initiate inquiry. Non-examination of complainants like Sh. Vinod Kumar and Sh. Prabhjit Singh would be a fatal to the disciplinary proceedings since the very initiation of inquiry is based on the complaints made by them. Supreme Court in the case of ***S.C. Girotra vs United Commercial Bank (UCO Bank)*** reported in 1995 Suppl.(3) SCC 212 held that author of the documents were required to be examined and cross examined. If the author of the document is not examined then it would be a fatal to the proceedings. In the present case, non-citing as well as non-examination and cross examination of Sh. Vinod Kumar and Sh. Prabhjit Singh would be fatal to the proceedings. Further appellate authority has taken note of that there were no preliminary investigation report of Sh. R.K.Gupta and Smt. Poonam Sachdeva. Therefore, it is completely false proceedings initiated by the respondent-Bank. Consequently, from the initiation of proceedings till passing of appellate authority's order are liable to be set aside. Accordingly, charge sheet dated 07.03.2014, disciplinary authority's order dated 20.12.2014 and appellate authority's order dated 03.06.2015 are set aside. Petition stands allowed. Respondents are directed to reinstate the petitioner if the petitioner has not attained age of superannuation. If had he been in service and retired from service in that event all service and monetary benefits be extended. Arrears of pay shall be calculated and disbursed within a period of 4 months from today.

(P.B.BAJANTHRI)
JUDGE

30.01.2018
pooja saini

Whether speaking/reasons Yes/No

Whether Reportable: Yes/No