

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

CWP No.24695 of 2013

Date of Decision:10.01.2018

Mukesh Kataria

... Petitioner

Vs.

Punjab National Bank and others

... Respondents

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

Present : Mr. Parveen Gupta, Advocate for the petitioner.

Mr. H.S. Bhatia, Advocate for the respondents.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has challenged the order of disciplinary authority dated 16.11.2011 and consequential order passed by the appellate and reviewing authority dated 25.3.2012 and 31.08.2013 (Annexures P-1, P-3 and P-8). He has also challenged a communication dated 7.5.2012 (Annexure P-6) by which petitioner's claim for promotion has been declined due to initiation of inquiry and imposition of penalty.

Petitioner while working as a Deputy Manager at Machhrouli is alleged to have committed certain misdeeds while discharging the post held by him. Thus, disciplinary proceedings were initiated by framing three charges and it was communicated to the petitioner. Thereafter, respondents proceeded by holding disciplinary inquiry under the Punjab National Bank Officers Employees (Discipline and Appeals) Regulation, 1977 (for short "1977 Regulation"). The Disciplinary Authority imposed penalty of reduction in one lower stage for a period of one year in terms of Regulation No.4 of 1977 Regulation. Feeling aggrieved by the order of disciplinary authority dated 16.11.2011. Petitioner exhausted the remedy of appeal as well as review. Both were against him. Hence, the present petition. Finding

of the inquiry officer and conclusion reads as under:

“EO Findings

After going through the documents/briefs of PO and defence and the proceedings of the enquiry it has been observed that:

Charge (i): PO has not provided any other supporting document nor deposed anything to this effect during course of enquiry to show that cost of project was not estimated correctly and advances were extended for accessories which are not matching implements. However, certain shortcoming have been observed which are given in the following pages under charge (iii).

Charge (ii). PO has not provided any other supporting document and has not identified any such account to prove the charge nor deposed anything to this effect during the course of enquiry.

Charge (iii) PO has cited following accounts wherein certain shortcomings have been observed as under:

A/c. No.2355-Sh. Jai Pal Singh

The quotation (ME 17/3) for Rs.338000/- is shown for tractor and Harrow both. The cost of Tractor and Harrow is not given separately.

In invoice (ME 17/4) the cost of matching implement (Harrow) Rs.38000/- is given overleaf but the same is neither acknowledged by borrower nor verified by bank official.

A/c. No.AU260 Sh. Raj Pal & Sh. Hoshiyar Singh

The quotation (ME 23/3) for Rs.338000/- is shown for tractor and Harrow both the cost of Tractor and Harrow is not given separately.

Though the cost/description of matching implement (Harrow) is given overleaf in invoice (ME 23/4) the same is neither acknowledged by borrower nor verified by bank official.

A/C. No.AU260 Sh. Raj Pal and Sh. Hoshiyar Singh

Invoice (ME 23/5) for Rs.140000/- contains the cost of Dumper Rs.100,000/- and Tyres Rs.40000/- alongwith gauge of sheet shown as 8/10. As regards, the requirement for details like

quality and number of tyres used in Dumper, PO has not provided any other supporting document to prove the charge.

A/c No.AU 211 Sh. Udai Singh

The quotation (ME 12/3) for Rs.340000/- is shown for tractor with three matching implements without mentioning the cost thereof separately nor details of said three matching implements.

Though the cost/description of matching implement (Harrow, Cultivator, Land Leveler) is given overleaf In invoice (ME 12/4) the same is neither acknowledged by borrower nor verified by bank official.

A/c No.AU 211 Udai Singh

The quotation for Dumper has not been provided by the PO. However, the invoice (ME 12/5) for Rs.203000/- is shown for Dumper size 15 x 6 alongwith tyre Lift. As regards, the requirement for details like quality and number of tyres used in Dumper, PO has not provided any other supporting document to prove the charge.

CONCLUSION: Keeping in view the above shorcoming observed based on the documents submitted in the case alongwith briefs of PO and defence as well as the proceedings of the enquiry, I come to the conclusion that the charge against Shri Mukesh Kataria stands partly proved.”

Inquiry officer has not discussed any evidence read with corroborative evidence. The disciplinary authority while imposing the penalty disagreed with the finding of the inquiry officer to some extent. Thus, there is a lacuna in the inquiry officers report as well as disciplinary authority order. It was not appreciated by the appellate as well reviewing authority. Hence, inquiry from the stage of inquiry proceedings till order of the reviewing authority are liable to be set aside. It was further submitted that petitioner is entitled for promotion and the same has been declined which is already under challenge.

Per contra, learned counsel for the respondent submitted that inquiry officer, even though, held that charges levelled against the petitioner was partly proved whereas the inquiry officer has taken note of the shortcomings which were presented by the presenting officer. The same has been extracted by the inquiry officer in his report. Therefore, there is no infirmity in the inquiry officer's report. No doubt the inquiry officer has in his conclusion held that charges against the petitioner stands partly proved. The same has been taken into consideration by the disciplinary authority while imposing the penalty. Thus, there is no infirmity in respect of decision of the disciplinary, appellate and reviewing authorities. Petitioner is not entitled to promotion in view of the initiation of inquiry and imposition of penalty till currency of penalty is in vogue.

Heard learned counsel for the parties.

Crux of the matter in the present petition is whether inquiry officer finding and conclusion is in order or not? Further decision of the disciplinary, appellate and reviewing authorities?

Perusal of the inquiry officer finding and conclusion, it is not a reasoned one since there is no corroborative evidence. What has been done by the inquiry officer is only extracted shortcomings which were presented by the presenting officer. Shortcoming like quoting the account number etc and to what extent, there is a lapse on the part of the petitioner is not proved by corroborative evidence. Therefore, inquiry officer report is not a report on merit. That apart inquiry officer in his conclusion stated that charges levelled against the petitioner were partly proved. However, which part of the charge is proved or not proved is not forthcoming from finding of the inquiry officer. Therefore, from the submission of inquiry officer's report till

passing order by the reviewing authority are liable to be set aside and it is ordered accordingly.

Matter is remanded to the disciplinary authority to hold fresh inquiry by appointing same inquiry officer, if he is in service or in the alternative to make an arrangement of appointing another inquiry officer. The inquiry proceedings shall be completed within a period of six months from today. Petitioner is hereby directed to co-operate in the inquiry proceedings. Insofar as promotion issue is concerned, as long as inquiry proceedings are not finalized, petitioner has no right to claim promotion since inquiry relates back to 23.02.2010. If the petitioner is exonerated in the disciplinary proceedings, in that event, he is entitled to promotion, if he is otherwise eligible in accordance with law.

With the above observation, petition stands disposed of.

10.01.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**