

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 23222 of 2014 (O&M)

Date of Decision: March 12, 2018

Bal Krishan

... Petitioner

Versus

Punjab National Bank and others

... Respondents

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

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

Mr. Ravinder Jain and Mr. Sunil Gupta, Advocates,
for the respondents.

P.B. Bajanthri, J. (Oral)

1. In the instant petition, petitioner has challenged the inquiry report, punishment order and appellate authority's order vide Annexures P/7, P/10 and P/12) dated 19.10.2012, 31.12.2012 and 16.05.2013 respectively.

2. Petitioner was working as a cashier in the Branch Office Hisar Main of Punjab National Bank. On 01.06.2004, he was stated to be on leave. A transaction of Rs. 3,60,000/- was made by Mr. Parvinder with reference to account of Mr. Rohit Tayal by posing Parvinder as a Kamal. While withdrawing a sum of Rs. 3,60,000/- by Parvinder as a Kamal from the account of Mr. Rohit Tayal, petitioner is stated to have connived with Parvinder (Kamal). The same was noticed by the respondent Bank officials on the date of alleged incident. Immediately Bank officials tried

to contact petitioner on 01.06.2004. Since they could not contact him, once again contacted him on 02.06.2004 at his residence by Sh. H.S. Hooda and Sh. R.K. Bansal, Senior Managers and petitioner handed over a sum of Rs. 3,45,000/-. Remaining Rs.15,000/- was remitted by petitioner's brother Sh. Gopal Sharma on 05.06.2004 at Branch Office Lawrence Road, Amritsar in account No. 0203005211603 in protested account. Arising out of these allegations against the petitioner, criminal proceedings were launched in which he is stated to have been acquitted on 01.05.2010. Appeal against acquittal was also dismissed on 06.09.2014. In the meanwhile, on 01.05.2012 respondents proceeded to initiate disciplinary proceedings against the petitioner by framing charge-sheet. Petitioner had submitted his reply on 11.05.2012. Inquiring officer held that charges leveled against the petitioner were proved. Thereafter, show cause notice along with inquiring officer's report was made available to the petitioner for which he had submitted his reply. Disciplinary authority was dis-satisfied with the petitioner's reply proceeded to impose the penalty of dismissal from service. Feeling aggrieved by the order of dismissal, petitioner preferred an appeal and it was rejected. Hence, the present petition.

3. Learned counsel for the petitioner submitted that once the petitioner was acquitted in criminal case after recording of evidence, question of holding disciplinary proceedings against the petitioner is impermissible. He has also pointed out from clause (f) of para 18.6 of Bipartite Settlement which prohibits for holding of disciplinary proceedings if an employee is acquitted in a criminal case. It was also

submitted that evidence which were adduced in criminal proceedings have not been appreciated by the Inquiring Officer so also disciplinary authority. It was further submitted that the alleged incident relates back to of the year 2004 whereas inquiry has been initiated in the year 2012. Therefore, on the ground of delay also, entire proceedings are liable to be set aside. Learned counsel relied on a decision of Supreme Court in ***Roop Singh Negi vs. Punjab National Bank and others***, reported in **2009(2) SCC 570**.

4. Per contra, learned counsel for the respondents submitted that having regard to the conduct of the petitioner that he remained absent on 01.06.2004 and in connivance with Mr. Kamal who posed as a Parvinder and they have managed to withdraw Rs. 3,60,000/- from the account of Mr. Rohit Tayal vide account No. 109307. Thereafter, on 02.06.2004, petitioner handed over a sum of Rs. 3,45,000/- to Sh. H.S. Hooda and Sh.R.K. Bansal, who were Senior Managers in the concerned Bank, when they had visited petitioner's residence while inquiring with the alleged incident. Thereafter, petitioner's brother Mr. Gopal Sharma had remitted balance amount of Rs.15,000/- on 05.06.2004. These materials are sufficient to hold that petitioner has committed serious misconduct in respect of money of a customer. No doubt, petitioner has been acquitted in criminal case, that does not bar of holding departmental inquiry. The evidence adduced in the criminal proceedings as well as in the disciplinary proceedings are entirely different for the reasons that criminal proceedings are relating to the offence under the Code of Criminal Procedure whereas disciplinary proceedings are relating to misconduct committed by the

petitioner, therefore, acquittal in the criminal case is distinguishable. It was further submitted that even though clause (f) of Para 18.6 of Bipartite Settlement prohibits to hold a disciplinary proceedings against an acquitted employee at the same time petitioner has not challenged the initiation of inquiry in the present petition. In other words, he had surrendered his right to disciplinary proceedings, therefore, he cannot turn around now and so as to contend that there is a violation of clause (f) of Para 18.6 of Bipartite Settlement. There is no mala fide urged against Sh. H.S. Hooda and Sh. R.K. Bansal, Senior Managers of the Bank so as to contend that they never recovered or petitioner handed over a sum of Rs. 3,45,000/- on 02.06.2004 and so also his brother Sh. Gopal Sharma had not remitted a sum of Rs. 15,000/- on 05.06.2004. In the absence of any mala fide against Sh. H.S. Hooda and Sh. R.K. Bansal so also refuting the alleged fact that his brother Mr. Gopal Sharma had remitted a sum of Rs.15,000/- on 05.06.2004, petitioner's contention cannot be considered that there is no evidence relating to recovery or handing over a sum of Rs. 3,45,000/- from petitioner. Therefore, cited decision by the petitioner, namely, ***Roop Singh Negi*** (supra) cannot be taken into consideration. It was further contended that no doubt there is a delay in initiation of disciplinary proceedings from 2004 to 2012, respondents were awaiting for decision in the criminal proceedings. Question of delay can be taken into consideration for the purpose of initiation of inquiry where there is no embezzlement of money is involved. In the present case, it is a clear case of misusing the customer's money to the tune of Rs. 3,60,000/- in the year 2004. Therefore, delay not be a hurdle for initiation of inquiry in the

disciplinary proceedings.

5. Heard learned counsel for the parties.

6. Petitioner has challenged the Inquiring officer's report, disciplinary and appellate authority's orders on the ground of delay. Initiation of inquiry is contrary to clause (f) of Para 18.6. of Bipartite Settlement, he has been acquitted in criminal case on the same allegations. The evidence adduced in the criminal proceedings have not been appreciated by the Inquiring Officer and disciplinary authority so also appellate authority. Question of delay in initiation of inquiry cannot be taken note of for the reasons that petitioner had not challenged the initiation of inquiry in the present proceedings. In other words, he has surrendered his right to the disciplinary proceedings. Moreover, the alleged charge is relating to mis-appropriation of Rs. 3,60,000/- from the customer's account in collusion with one Parvinder (Kamal). Question of clause (f) of para 18.6 of Bipartite Settlement of Bank could be looked into provided petitioner had challenged the initiation of inquiry in the year 2012. Even now petitioner has not challenged the initiation of inquiry dated 01.05.2012 to contend that there is a prohibition to hold a departmental inquiry if an employee is acquitted in a criminal case on the same alleged set of allegation. Insofar as ignoring the evidence adduced in criminal proceedings by the disciplinary authority is concerned, it is to be noted that criminal proceedings have been launched with reference to offence under the Code of Criminal Procedure whereas disciplinary proceedings are relating to misconduct committed by the petitioner, therefore, they are entirely different. Hence, parallel proceedings could be

held arising out of same set of facts / allegations. That apart perusal of reply to the charge sheet dated 01.05.2012 submitted by petitioner on 11.05.2012 nowhere in his reply has taken the contention that Sh. H.S. Hooda and Sh. R.K. Bansal with an ulterior motive stated that they have recovered a sum of Rs. 3,45,000/- from petitioner's possession at his residence on 02.06.2004, further, he has not countered relating to deposit of Rs. 15,000/- by petitioner's brother Sh. Gopal Sharma. Therefore, petitioner cannot go back and say that with a mala fide intention Sh. H.S. Hooda and Sh. R.K. Bansal falsely implicated the petitioner. In the absence of mala fide against Sh. H.S. Hooda and Sh. R.K. Bansal, their evidence adduced in the disciplinary proceedings cannot be ignored by the Inquiring Officer as well as disciplinary authority. In the criminal proceedings, the evidence of Sh. H.S. Hooda and Sh. R.K. Bansal may not have appealed to the Presiding Officer. In other words, on the benefit of doubt, petitioner had been acquitted. The same principle cannot be taken into consideration in respect of disciplinary proceedings. Cited decision in the case **Roop Singh Negi's** case (supra) by learned counsel for the petitioner in respect of taking evidence adduced in the criminal proceedings are concerned, it is to be noted that said case is distinguishable with reference to the present case having regard to the fact that petitioner has not alleged any mala fide against Mr. H.S. Hooda and Mr. R.K. Bansal, therefore, their evidence are required to be taken into consideration for the purpose of recovering a sum of Rs. 3,45,000/- on 02.06.2004 so also remittance of Rs. 15,000/- by the brother of petitioner Sh. Gopal Sharma in the respondent - bank's account on 05.06.2004.

7. In view of these facts and circumstances, petitioner has not made out a case to interfere with inquiring officer's report, dismissal order and appellate authority's order. Accordingly, petition stands dismissed.

March 12, 2018
vkd

[P.B. Bajanthri]
Judge

Whether speaking / reasoned : Yes

Whether reportable : No