

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.214

CWP-25256-2015

Date of decision : 10.05.2018

Sushil Kumar

..... Petitioner

VERSUS

Union of India and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Sat Narain Yadav, Advocate, for the petitioner.

Mr. V.K. Kaushal, Advocate, for respondent-1/UOI.

Mr. Saurav Verma, Advocate with
Mr. Akash Soni, Advocate, for respondent Nos.2 to 4.

SUDHIR MITTAL, J. (Oral)

The petitioner has been given the punishment of removal from service on account of misconduct. His appeal has been rejected and hence, the present writ petition has been filed.

The petitioner was appointed as Clerk with respondent-Bank on 01.11.2002. He got married on 05.12.2012. The relations between the parties got strained from the very beginning leading to registration of FIRs as well as filing of criminal complaint on the allegation that he got issued an ATM card of the account of his wife without proper authorization and misappropriated money from her account. An enquiry was conducted by the department, in which he was found guilty. Show cause notice was issued to the petitioner, an enquiry was conducted and an order of removal from service dated 31.03.2015 was passed. Appeal was rejected vide order dated 12.05.2015.

Learned counsel for the petitioner submits that the disciplinary proceedings commenced on the basis of complaint presented by his wife viz. Ms. Priya Bodwal, but she was not examined as a witness by the department.

Thus, there was no evidence against the petitioner and no punishment should have been imposed upon him. Moreover, the police conducted an enquiry on a similar complaint filed by his wife. A copy thereof is dated 25.11.2013 and is on record as Annexure P-4, in which the petitioner was declared innocent. A criminal complaint was also filed by his wife in respect of the same incident and the same was dismissed. The investigation report dated 25.11.2013, was placed on record during the enquiry, but the same has not been taken into consideration. Thus, the findings of the disciplinary proceedings are perverse and deserve to be quashed.

Learned counsel appearing for the respondent-Bank vehemently contests the claim of the petitioner. He states that proper procedure was followed while conducting the enquiry and there is no allegation in the writ petition that principles of natural justice were not complied with. The imposition of punishment is in the domain of the employer and the same cannot be interfered with in exercise of jurisdiction under Article 226 of the Constitution of India unless it is shown to be perverse. No perversity has been pointed out by learned counsel for the petitioner. He also makes reference to reply submitted by the petitioner to the complaint made by his wife. A copy thereof is on record as Annexure P-6. In the said reply, it is stated that the ATM card was taken on the instructions of the wife and that money was also withdrawn by him as per her instructions. However, this is not borne out from the evidence on record. Later on, the petitioner changed his instance and pleaded that his wife herself had got the ATM card issued and he never withdrew the money. That apart, there is other evidence available on the record by way of the record maintained by the Bank

regarding issuance of ATM card as well as accounts statements, which clearly show that the petitioner got an ATM card issued against the account of his wife without any authorization and used it for transferring money from her account to his own account.

Criminal proceedings and departmental proceedings occupy different domains. The standard of proof is also different. It is settled law that acquittal in the criminal case would not entitle a delinquent employee to claim benefit thereof in departmental proceedings. Thus, the fact that the petitioner was acquitted in the criminal complaint filed by his wife does not help the cause of the petitioner. That apart, the order of acquittal was passed after the conclusion of the disciplinary proceedings and was not available on the record of the disciplinary proceedings and therefore, no reliance can be placed thereupon. While passing the order of removal from service, the disciplinary authority has taken into consideration the evidence available on the record such as the Register maintained for issuance of ATM cards, account statements as well as oral evidence. Thus, non-appearance of wife of the petitioner as prosecution witness would not be detrimental as there is other evidence available on record to establish the guilt of the petitioner. It is not a case, wherein it can be said that there is no evidence available on the record. The standard of proof in disciplinary proceedings is preponderance of probability and the view taken by the disciplinary authority cannot be stated to be perverse. Thus, there is no scope for interference with the order of removal from service as the said punishment cannot be said to be disproportionate. The appellate authority has also

applied his mind and has considered the issues raised by the petitioner while rejecting his appeal.

Learned counsel for the petitioner has relied upon the judgment of Supreme Court of India in ‘Kuldeep Singh Vs. Commissioner of Police and others, 1999(2) SCC 10’, wherein it is stated that perversity and bias in the course of disciplinary proceedings render them invalid. I have already held that there is no perversity in the present case. There is no allegation of bias raised against any one and therefore, the said judgment cannot help the case of the petitioner.

In view of the above, the writ petition is misconceived and is dismissed.

(SUDHIR MITTAL)
JUDGE

10.05.2018

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No