IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

220 **CWP-6854-2013 (O&M)**
Date of decision:24.04.2018

Om Parkash

...Petitioner

Versus

Central Bank of India and others

.... Respondents

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

Present: Mr.Nitin Grover, Advocate for the petitioner.

Mr. Ajay Pal Singh, Advocate for the respondents.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioner has challenged the award passed by the labour court dated 22.03.2012 (Annexure P-9).

2. Petitioner was appointed as a Peon with the respondent-Bank. While he was working as such, he was subjected to disciplinary proceedings on the allegations that he slapped the Manager of the Bank and abused him for which disciplinary proceedings were held and it was concluded in imposing the penalty of “Discharge with Superannuation Benefit which is otherwise payable at that level and in future ineligiblity of employment” vide Bi-party settlement dated 19.10.1966 amended from time to time in para No. 19.6(B).

3. Feeling aggrieved by the order of penalty, petitioner submitted memorandum of appeal before the appellate authority and it was rejected on 06.06.2002. Thereafter, he raised an industrial dispute. Central Industrial

Tribunal decided reference against the petitioner. Hence the present petition. Order of penalty reads as under:-

R.O./PRS/DAD/00-01/1519 : 12.03.2001

Memorandum

In respect of charge-sheet No.: R.O./PRS/1999-2000/F-857/88 dated 29.04.1999 against Sh. Om Prakash, Peon, NIT Faridabad Branch, the Disciplinary Authority S.S.Tahin, Regional Manager, Rohtak vide letter No.:R.O./PRS/DAD/00-01/1518 dated 12.03.2001 has decided the penalty "Discharge with Superannuation Benefit which is otherwise payable at that level and in future ineligibility of employment" Bi-party settlement dated 19.10.1966 amended from time to time in para No. 19.6(B).

The above decided punishment against Sh. Om Prakash, Peon, Central Bank of India, NIT Faridabad Branch is levied with immediate effect."

When the petitioner was subjected to disciplinary proceedings and after receipt of the inquiring officer report disciplinary authority issued show cause notice along with the inquiring officer report seeking petitioner's explanation. Pursuant to the show cause notice dated 07.02.2001 petitioner has presented reply on 23.02.2001 (Annexure P-6). After receipt of the petitioner's reply on the show cause notice, disciplinary authority proceeded to impose the penalty on 12.03.2001 as is evident from the order of the disciplinary authority. Insofar as imposing of penalty is concerned, it is crystal clear that it is not a speaking order. When the procedure requires that after receipt of the inquiring officer report by the disciplinary authority and thereafter, if the disciplinary authority issues show cause notice along with the inquiring officer's report it was bounden duty of the disciplinary authority to consider the petitioner's reply on the show cause notice. Whereas in the present case penalty order do not even refer or disclose with reference to issuance of show cause notice and receipt of the reply so also non-consideration of the contentions of the petitioner on the inquiring officer's report. Therefore, order of disciplinary authority is liable to be set aside.

4. Learned counsel for the respondent-Bank resisting above contention stated that inquiry was held in accordance with law. Petitioner has admitted the alleged charge and appellate authority has passed a detailed order. Therefore, question of interference with the award passed by the labour court is not made out by the petitioner.

5. Heard the learned counsel for the parties.

6. In view of non-consideration of the petitioner's reply irrespective of whether petitioner has admitted the charge or not that does not cure the order of the disciplinary authority insofar as imposing the penalty. Even assuming that appellate authority's order is speaking order that does not cure the disciplinary authority order. This court in the case titled as ***Sonia and others versus State Bank of India and others CWP No. 14820 of 1994 (D.B.)*** held that if the appellate authority's order is a speaking order that cannot cure the defect of the disciplinary authority which is not a speaking order. Relevant extract of judgment reads as under:-

> *3. Thus, it was contended that disciplinary*

authority order is merged with the appellate authority and reviewing authority. Consequently, even if there is defect in the disciplinary authority order of the appellate authority and reviewing authority is required to be upheld if it is in accordance with 3 of 7 law. The aforesaid contention cannot be accepted. In view of the decision passed by the Supreme Court in the case of T.P.Senkumar, IPS versus Union of India and others reported in 2017(6) SCC 801 in para 85 reads as under:-

> *"85. The law has been well settled for many years now that when an order is passed in exercise of a statutory power on certain grounds, its validity must be judged by the reasons mentioned in the order. Those reasons cannot be supplemented by other reasons through an affidavit or otherwise. Were this not so, an order otherwise bad in law at the very outset may get validated through additional grounds later brought out in the form of an affidavit"*

Further justice MEGARRY ruled in Leary versus National Union of Vehicle Builders, reported in (1970) 2 All ER 713 held as under:-

> *"If one accepts the contention that a defect of natural justice in the trial body can be cured by the presence of natural justice in the appellate body this has the result of depriving the member of his right of appeal from the expelling body. If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied*

with an unjust trial and a fair appeal? Even if the appeal is treated as a hearing de novo, the member is being stripped of his right to appeal to another body from the effective decision to expel him."

Supreme Court in the case of Oryx Fisheries Private Limited versus Union of India and others reported in (2010)13 S.C.C.427 in paras 41, 43 to 45 held as under:-

4 of 7 "41. In the instant case the appellate order contains reasons. However, absence of reasons in the original order cannot be compensated by disclosure of reason in the appellate order.

43. For the reasons aforesaid, this Court quashes the show-cause notice as also the order dated 19.3.2008 passed by the third respondent. In view of that, the appellate order has no legs to stand and accordingly is quashed.

44. We are constrained to observe that unfortunately this aspect of the matter was not considered by the High Court. We cannot, therefore, approve the order of the High Court and the same is accordingly quashed. The cancellation of the registration certificate of the appellate is set aside and we declare the registration to be valid if it is not vitiated for any other reason.

> *45. We, however, make it clear that if the authorities are so inclined, they can proceed from the stage of showcause notice afresh but strictly in accordance with law and following the fair procedure indicated in this judgment."*

Supreme court in the case of Ravi Yashwant Bhoir versus District Collector, Raigad and others reported in (2012) 4 SCC 407 held that recording of reasons for a decision is held to be a part of principle of natural justice. Recording of reasons in cases where the order is subject to further appeal is very important from yet another angle. Similar view was expressed by the Supreme Court in the case titled as Babu Lal versus State of Haryana and others reported in (1991) 2 SCC 335. If the original order 5 of 7 was a nullity, an order passed by the higher authority in revision could be of no greater value or effectiveness. Even though the latter order complied with natural justice; in such a case, the original order did not get merged with the order passed in revision. Supreme Court in the case of Mohd. Yunus Khan versus State of Uttar Pradesh and others reported in (2010) 10 SCC 539 in para 27 held as under:-

> *"27. The existence of an element of bias renders the entire disciplinary proceedings void. Such a defect cannot be cured at the appellate stage even if the fairness of the appellate authority is beyond dispute. (Vide S. Parthasarathi v. State of A.P. and Tilak Chand Magatram Obhan v. Kamala Prasad Shukla.)"*

If the foundation of a structure is removed the superstructure cannot stand and must collpase. Therefore, if the order of the lower authority could not be saved and sustained, the order of the higher authority made in revision must also fall along with it. Supreme Court in the case of Mysore State Road Transport Corporation versus Mirja Khasim Ali Beg and another reported in AIR1977 SCC 747 held that the principle that an order which was null and void could not become valid by confirmation by higher authority in appeal."

7. In view of these facts and circumstances, proceedings from 12.03.2011 i.e. disciplinary authority's order and consequential proceedings like order of appellate authority as well as award passed by the Labour court dated 22.03.2012 (Annexure P-9) are set aside. Matter is remanded to the disciplinary authority to pass fresh order after due consideration of the petitioner's plea raised in the reply dated 23.02.2001. Disciplinary authority is hereby directed to pass speaking order within a period of 3 months from the date of receipt of this order. During the intervening period, petitioner be treated as deemed to be under order of suspension in view of the decision rendered in the case of ***Managing Director, ECIL, Hyderabad Versus B.Karunakar*** reported in (1993)4 SCC 727 read with order passed in the case of ***Prem Kumar Versus FCI and others*** (RSA-4970-2010) decided on 20.12.2016. Paras 10 and 11 read as under:-

"10. The disciplinary authority is directed to comply provisions of Regulations, 1971 from the defective stage and proceed to complete the inquiry within a period of 6 months from today in accordance

with Regulations, 1971. The appellant has been terminated from service on 08.11.1999. Now order is being set aside on the technicalities that the respondents have not followed the Regulations, 1971 before order of termination. Therefore, the appellant is deemed to be under suspension from 08.11.1999 till passing of a fresh order in view of the Supreme Court decision titled as ***Managing Director ECIL versus B. Karunakar*** *reported in 1994 SCC Supl. (2) 391, wherein it is held that if the order of termination or disciplinary authority is set aside on technical ground in such circumstances, employee is deemed to be under suspension. Thus for the purpose of completion of disciplinary proceedings the appellant is deemed to be under suspension till date of his retirement or till passing of fresh order in disciplinary proceedings.*

11. In view of the legal position the respondents are directed to pay subsistence allowance from 08.11.1999 till the date of his retirement. Subsistence allowance shall be calculated and disbursed within a period of 4 months from today."

It was upheld by the Supreme Court in Special Leave to Appeal (C) No.14323/2017 ***(Food Corporation of India and others Versus Prem Kumar Yadav)*** decided on 04.08.2017 which reads as under:-

"We find no reason to entertain this special leave petition, which is accordingly, dismissed.

However, the petitioner is granted a period of six more months to complete the inquiry, as directed by the High Court. It is also made clear that the liability to pay the subsistence allowance would be with effect from the date of termination i.e. 08.11.1999 to the actual date *of superannuation.*

Pending application(s), if any, shall stand disposed of."

Respondent-Bank is hereby directed to pay the subsistence allowance to the petitioner while calculating for a period from 12.03.2001 till date.

8. Accordingly, CWP stands allowed.

(P.B.BAJANTHRI)
JUDGE

24.04.2018
pooja saini

Whether speaking/reasons Yes/No
Whether Reportable: Yes/No