

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WP No. 4085 of 1993**

- Harishankar Sharma, aged about 48 years, S/o Late Shri Bhagwan Das Sharma, Assistant Branch Manager, Central Bank of India, Manendragarh Distt. Sarguja (M.P.)

---- Petitioner**Versus**

- Central Bank Of India, A Nationalised Bank Having it's Head Office at Chandramukhi, Nariman Point, Bombay Through its Chairman.

---- Respondent

For Petitioner :- Shri Rakesh Thakur, Advocate
For Respondent :- Shri Anand Shukla with Shri Aditya Tiwari,
Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra
Order On Board

04/07/2019

1. Challenge in this petition is to the orders Annexure P-1, P-2, P-3, P-6 and P-9. By Annexure P-1, the petitioner was issued a charge-sheet on 19.10.1991. Annexure P-2 is the finding of the enquiry officer on the charges and Annexure P-3 dated 29.09.1992 is the order passed by the Regional

Officer awarding the punishment of "Reduction of pay by one stage in the time scale of pay". By Annexure P-6, the petitioner's appeal against the order of punishment has been rejected and by Annexure P-9, the Regional Manager annulled petitioner's promotion to the scale of MMG(II), which was made vide order dated 14/18-10-1991.

2. Shri Rakesh Thakur, learned counsel for the petitioner, would submit that the punishment awarded to the petitioner was in consequence to illegally drawn departmental proceedings which was without jurisdiction and further that on the date of inflicting the punishment the petitioner has already been promoted to the scale of MMG (II), therefore, the Regional Manager was not competent to inflict the punishment. He would also submit that petitioner was not supplied copy of documents, therefore, there is violation of principles of natural justice.
3. Per contra Shri Anand Shukla with Shri Aditya Tiwari, learned counsel appearing for the respondent Bank would submit that the petitioner admitted the facts constituting the charge, therefore, the award of punishment of reduction of pay by one stage in the time scale of pay was in accordance with the relevant service rule. In respect of annulment of promotion, they would submit that as on the date of

petitioner's promotion departmental action was in process, therefore, under clause 3.9 of the promotion policy any subsequent promotion within three years of the operation of punishment has to be annulled.

4. At the relevant time, the petitioner was posted as Branch Manager, Jaithari, District Shahdol. On 19.10.1991, petitioner was issued a charge-sheet containing two charges that he used to write arrogant and insulting letters to the higher authorities and thus he is not maintaining discipline and decorum in official matters and secondly he has lodged a false complaint against the Regional Manager, Shahdol.
5. Petitioner submitted his reply to the charge-sheet accepting the fact of using such language which according to the management was arrogant and insulting. The petitioner explained the circumstances in which he was forced to use such language in his communication with the higher authorities. The following is the text of his reply to the charge-sheet :-

“I acknowledge receipt of the above noted chargesheet dated 19.10.91.

In this connections I wish to state that during the period of my tenure as Branch Manager Mangther branch I was feeling that my higher authorities had singularly

identified me for reasons best known to them, to attack me with prejudicial and partial attitude. Due to constant pressure of work coupled with shortage of Staff and also with such approach of my higher authorities, I was forced in depressive moods to bring before the higher authorities the actual facts/happenings taking place in the Region then.

I, being a small speck and a junior staff of the bank could neither stop such happenings nor prove them for want of support.

I had no motives except to come out with my internal feelings/happenings which the letters mentioned in the chargesheet spellout.

I request the higher authorities to take them in right perspective and condone me, as a father condoning his in experienced but rebellious son”.

6. Having read the above quoted contents of the reply filed by the petitioner, I am of the considered view that it would amount to admission of the fact constituting the charge.

7. The Supreme Court in the matter of **Channabasappa Basappa Happali Vs. The State of Mysore**¹ held in para-5 thus:-

“5. It was contended on the basis of the ruling reported in R. v. Durham Quarter Sessions; Ex parte Virgo, (1952 (2) QBD 1)

that on the facts admitted in the present case, a plea of guilty ought not to be entered upon the record and a plea of not guilty entered instead. Under the English law, a plea of guilty has to be unequivocal and the Court must ask the person and if the plea of guilty is qualified the Court must not enter a plea of guilty but one of not guilty. The Police constable here was not on his trial for a criminal offence. It was a departmental enquiry, on facts of which due notice was given to him. He admitted the facts. In fact his counsel argued before us that he admitted the facts but not his guilt. We do not see any distinction between admission of facts and admission of guilt. When he admitted the facts, he was guilty. The facts speak for themselves. It was a clear case of indiscipline and nothing less. If a Police Officer remains absent without leave and also resorts to fast as a demonstration against the action of the superior officer the indiscipline is fully established. The learned Single Judge in the High Court was right when he laid down that the plea amounted to a plea of guilty on the facts on which the petitioner was charged and we are in full agreement with the observation of the learned Single Judge. {Also see **Secretary to the Panchayat Raj and others Vs. Mohd. Ikramuddin²**, **Additional District Magistrate (City) Agra Vs. Prabhakar Chaturvedi and another³**}

(Emphasis supplied)

8. The legal position is thus absolutely well settled that when an employee admits the facts constituting the charge, no further proof of misconduct is required.

9. In view of the above settled legal position, the Enquiry

² 1995 (8) SLR 816

³ (1996) 2 SCC 12

Officer is fully justified in finding that charge no.1 against the petitioner about using arrogant and insulting letters to the superior is proved. The Enquiry Officer found the charge no. 2 to be not proved. On the basis of the finding of the charge no.1, the order of punishment has been passed which cannot be said to be disproportionate to the nature of misconduct.

10. The second issue regarding annulment of promotion revolves around the first episode of writing arrogant letters and the departmental enquiry in contemplation. In the reply filed by the respondent Bank it is stated that clause 3.9 of the promotion policy for the officers of the Bank provides that "Officers in respect of whom disciplinary action is in process, will however, be permitted to take part in the promotion process subject to the condition that the promotion will be withheld until the completion of the disciplinary action. In the event of the officer being exonerated the promotion, if due, will be given effect from the date on which it would have been otherwise effected but for the disciplinary action".

Before the above clause 3.9 of the policy clause 3.8 also needs reference which reads that " officers in respect of whom disciplinary action has been taken in the past would

not normally be permitted to participate in the promotion process for a period of 3 years from the time of infliction of punishment”.

11. Based on the above referred clause of the promotion policy, the respondent Bank would justify the order Annexure P-9 by which petitioner's promotion to the scale of MMG (II) has been annulled.
12. The stand taken by the respondent to defend Annexure P-9 does not appear to be legally sustainable. Clause 3.9 of the policy as reproduced in the return speaks about annulment of promotion, if at the time of making promotion the departmental action was in process but the actual punishment was inflicted later on. A disciplinary action is said to be in process on and from the date of constitution of departmental enquiry by issuance of formal charge-sheet. Before the date of issuance of charge-sheet or constitution of departmental enquiry, a disciplinary action may be in contemplation but it would not be in process.
13. It is settled in service jurisprudence that if a departmental enquiry is not constituted on the date of promotion any subsequent order of promotion would not make the previous promotion order nullified.

14. It is also to be noticed that by previous memo dated 21.06.1989, 30.08.1989, 29.01.1990 and 17.07.1990, the petitioner was called upon to submit explanation failing which departmental action was to be taken against him. The language of the memo would itself make it clear that at the stage of issuance of these memos the departmental action was only in contemplation but was not initiated. These memos were probably issued to ascertain whether a disciplinary action should be initiated against the petitioner or not. Thus merely by issuing memos a disciplinary action is not initiated, unless a formal charge sheet is issued.
15. There is yet another point which needs to be addressed that the petitioner's promotion dated 14.10.1991 was made by a committee comprising of one Deputy General Manager and two Assistant General Manager as is clear from service regulation Annexure P-11 mentioning the said committee to be competent authority for making promotion to the scale of MMG (II). As against this, the order Annexure P-9 was issued by the Regional Manager who was not competent to annul a promotion order which was otherwise issued by an authority superior to the Regional Manager.
16. For all the above stated reasons, while refusing to interfere with the order of punishment Annexure P-3 dated

29.09.1992, and Annexures – P/1, P/2 & P/6, this Court is of the considered view that the order dated 11.12.1992 (Annexure - P/9) annulling the petitioner's promotion dated 14/18.10.1991 deserves to be and is hereby quashed with all consequential benefits like arrears of salary and allowances on the promoted post to MMG (II), etc. from the date the promotion was annulled.

17. In the result, the writ petition is allowed in part.

SD/-
(Prashant Kumar Mishra)
Judge

Ayushi