

Sr. No.218

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

CWP No.18170 of 2015 (O&M)

Reserved on : 12.07.2019

Pronounced on 05.08.2019

Gurmit Singh

... Petitioner

Versus

Punjab and Sind Bank and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. H.C.Arora, Advocate,
for the petitioner.

Mr. K. Kartikeya, Advocate,
for the respondents.

ARUN MONGA, J.

Petitioner herein seeks issuance of a writ in the nature of certiorari, *inter alia*, to quash impugned order dated 06.02.2012 (Annexure P-9) passed by his Disciplinary Authority imposing punishment of “reduction to a lower stage in the time scale of pay by 6 stages for a period of 3 years and he will not earn any increment during this period of 3 years of such reduction and on expiry of this reduction of 6 stages will have the effect of postponing the future increments of his pay”.

2. The said punishment so awarded was upheld vide Appellate Order dated 22.06.2012 (Annexure P-11) and was further reaffirmed by the Reviewing Authority vide order dated

04.12.2012 (Annexure P-13).

3. Facts emerging from the conjoint reading of the pleadings are that petitioner was issued charge-sheet dated 12.01.2010 on account of his gross misconduct during his posting at Branch Office Bijaynagar.

4. Allegations, *inter alia*, contained therein are/were that he allowed certain advances to the borrowers without obtaining status report from the previous bank wherein 17 such accounts were found. In three cases, as stated in the charge sheet, the lien in the revenue record was marked after the disbursement of the loan amount. Similarly in other three cases lien of previous banks were cancelled and recorded on the same day in favour of the respondent-Bank.

5. In a number of accounts, the petitioner had allowed transfer of amount from KCC limit to tractor loan and was aware about the diversification of funds, which reflected gross violation of the procedure and exercise of excessive discretionary power conferred upon him. In some cases, it was also found that signatures/thumb impressions of the customers had been obtained on blank loan documents and the said customers were unaware about the sanctioning of the said loan facility.

6. On account of the aforementioned allegations, departmental enquiry proceedings were initiated against the petitioner. The enquiry officer submitted his detailed enquiry report, holding that seven charges were proved and one was partly proved against the petitioner.

7. A copy of the enquiry report was forwarded to the petitioner and his comments were sought. The disciplinary authority after going through the comments of the petitioner as well as the findings of the enquiry officer, vide order dated 06.02.2012 (Annexure P-9) held that the petitioner was guilty of misconduct in terms of Regulation 3(1) to 3 (3) read with Regulation 24 of the Punjab and Sind Bank Officers' Employees (Conduct) Regulations 1981 and the penalty of reduction to a lower stage in the time scale of pay by six stages for a period of three years wherein the petitioner will not earn any increment during this period of 3 years of such reduction and on the expiry of this reduction of 6 stages, it shall have the effect of postponing the future increments was imposed.

8. The petitioner preferred a statutory appeal against the aforementioned order, which came to be rejected vide order dated 22.06.2012 (Annexure P-11) by holding that the punishment commensurate with the misconduct of the petitioner and while noticing the fact that a huge amount of Rs.4.01 crores had turned into NPA category out of which Rs.2.87 crores have been technically written off, thereby exposing the Bank to undue loss and litigation.

9. The petitioner preferred a review petition, which was also rejected vide order dated 04.12.2012 (Annexure P-13). Hence the writ petition.

10. I have heard learned counsel for the petitioner and gone through the rival pleadings. I am of the view that the petition

deserves to be allowed for the reasons stated hereinafter.

11. Learned counsel for the petitioner contended that the punishment imposed upon the petitioner is disproportionate, highly excessive, and anomalous in nature, more so in view of the fact that no financial loss was quantified at any stage of the proceedings and not even in the impugned orders of punishment. The representation dated 04.02.2012 (Annexure P-8) submitted by the petitioner against the show cause notice dated 24.01.2012 (Annexure P-5) was not at all considered while passing the order of punishment dated 06.02.2012 (Annexure P-9) thereby depriving the petitioner of reasonable opportunity of defence.

12. Per contra, upon his arguments, learned counsel for the respondent-Bank submits that it is a settled position of law that the writ jurisdiction cannot be invoked by way of an appeal against the order of punishment imposed. The writ jurisdiction under Article 226 is not to be invoked by the petitioner as an appellate jurisdiction. Even on this account, the writ petition on merits deserves to be rejected.

13. He further argues that as far as the issue of quantum of punishment is concerned, the petitioner can at best seek for invoking the jurisdiction of the writ court, in case the punishment is shockingly disproportionate. The Bank has suffered NPAs to the tune of Rs.4.01 crore due to the negligence and misconduct of the petitioner and, therefore, the punishment imposed cannot be said to be shockingly disproportionate. Learned counsel for the respondent-Bank relies on the decision in '**Chennai Metropolitan**

Water supply & Sewerage Board and Another Vs. T.T.

Muraribabu, 2014 (4) SCC 108, wherein the Hon'ble Supreme Court held that the punishment can be said to be disproportionate only when on the basis of the material brought on record, the punishment imposed shocks the conscience of the Court.

14. In the present case, petitioner has not raised any ground to suggest that the inquiry proceedings were held contrary to the rules or otherwise were illegal and, therefore, the material before and findings of the Inquiry Officer are not disputed. The punishment order, therefore, cannot be said to be shockingly disproportionate once the material before and findings of the Inquiry Officer have not been disputed by the petitioner.

15. He also relies on the ratio laid down by the Hon'ble Supreme Court in ***CRPF and others Vs. Surinder Kumar, 2011 (10) SCC 244*** that a punishment can be said to be shockingly disproportionate if it reflects perversity or irrationality so as to justify judicial review. The petitioner has not pointed out any single fact which could qualify the said benchmark and, therefore, no ground for interference under the writ jurisdiction of this Hon'ble Court is made out.

16. Having given my thoughtful consideration to the rival arguments, I am of the view that the dis-proportionality of the punishment is quite apparent. It may be stated that even in the absence of quantification of any financial loss in any of the impugned orders, a very disproportionate and highly excessive punishment of reduction by 6 stages in the existing pay scale of the

petitioner, with huge impact on the retiral benefits was imposed on the petitioner, which was totally unjustified. The punishment was imposed upon the petitioner without any application of mind, but only with a view to deprive him of huge chunk out of retiral benefits, since the punishment order was issued on 06.02.2012, stating that the punishment of reduction by 6 stages in the existing pay scale shall remain operational for a period of 3 years and the petitioner will not earn any increment during this period of 3 years of such reduction. Petitioner was due for retirement on superannuation on 31.01.2015, whereas the period of operation of the punishment was to expire on 06.02.2015. It is therefore, clear that the punishment was imposed in such a manner so as to deprive the petitioner of a huge portion of his retiral benefits, on his retirement on 31.01.2015.

17. The Disciplinary Authority deprived the petitioner of reasonable opportunity of representation against the proposed penalties and prejudice to his defence inasmuch as, a show cause notice was issued to the petitioner on 24.01.2012, granting only a period of 10 days to the petitioner to submit reply to the said show cause notice. In response to the said show cause notice, the petitioner sent a representation dated 01.02.2012 (Annexure P-6) seeking extension of time till 15.02.2012, *inter alia* on the ground that he was patient of Hepatitis B and his wife was patient of severe cancer.

18. However, on the same day the Disciplinary Authority rejected the request of the petitioner and directed that the

representation of the petitioner in response to the show cause notice (proposing punishment) must reach him by 06.02.2012. The petitioner accordingly prepared an exhaustive representation (Annexure P-8) and sent the same to the Disciplinary Authority by speed post on 04.02.2012 as is reflected from para No.11 of the writ petition, the said representation was expected to reach the office of Disciplinary Authority on 06.02.2012. However, without waiting for even a single day for the receipt of representation in his office, the Disciplinary Authority on 06.02.2012 itself passed the impugned order (Annexure P-9) imposing the punishment on the petitioner.

19. In the impugned order, Punishing Authority did not refer at all to the factual position as to whether it had received the representation submitted by the petitioner or not. It is also to be noticed that 07.02.2012 was a holiday and in such circumstances, the Disciplinary Authority should not have rushed to issue the impugned order of punishment on 06.02.2012 itself, and should not have issued any such order before 08.07.2012. The aforesaid aspect of the matter was brought by the petitioner to the notice of the Appellate Authority, in his appeal dated 09.03.2012 (Annexure P-10) as well as to the notice of the Reviewing Authority through review petition (Annexure P-12) submitted by him. Despite noticing this aspect, neither the Appellate Authority nor the Reviewing Authority dealt with these averments made by the petitioner in his exhaustive representation dated 04.02.2012 (Annexure P-8) and straightway upheld the order of punishment,

obviously in a pre-determined manner.

20. As regards non-compliance with the principles of natural justice, the purported show cause notice dated 24.01.2012 (Annexure P-5) shows that Disciplinary Authority had straightway accepted the findings recorded by the Inquiry Officer and stated therein that he concurs with the findings of the Inquiry Officer and after arriving at a tentative conclusion to impose the punishment of reduction by 6 stages in the existing pay scale, asked the petitioner to reply to the said show cause notice. Without quantification of the loss attributed to the petitioner obviously the Punishing Authority did not and could not have applied its mind to the proportionately of the punishment. It seems that issuance of the show cause notice dated 24.01.2012 (Annexure P-5) of proposed punishment on the petitioner was treated merely an empty formality and the same had been issued with a closed mind.

21. In view of my discussion above and the reasons contained therein, the impugned order of punishment dated 06.02.2012 (Annexure P-9), the order passed by the Appellate Authority dated 22.06.2012 (Annexure P-11) and the order passed by the Reviewing Authority dated 04.12.2012 (annexure P-13) are hereby quashed with all consequential benefits.

22. Petition is allowed in the aforesaid terms.

05.08.2019

vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No