IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 21651 of 2015 (O&M)
Decided on: 27.06.2019

M.K. Saxena **....Petitioner**

Versus

Sarva Haryana Gramin Bank & Anr. **....Respondents**

with CWP No. 22190 of 2015(O&M)

N.S. Lamba **....Petitioner**

Versus

Sarva Haryana Gramin Bank & Anr. **.....Respondents**

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Argued by:- Ms. Abha Rathore, Advocate
for the petitioner in CWP No. 21651 of 2015.

Mr. A.P. Bhandari, Advocate
for the petitioner in CWP No. 22190 of 2015.

Mr. Bhushan Bhatia, Advocate
for the respondents.

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ARUN MONGA, J.

1. Both the above referred writ petitions are being disposed of by this common order as the factual and legal aspects in both the petitions are similar.

2. For brevity, facts are being taken from CWP No. 21651 of 2015. Impugned herein, inter alia, is the dismissal order dated 21.12.2014 (Annexure P-8) of the petitioner as upheld vide appellate order dated 15.07.2015 (Annexure P-10) passed by the General Manager and the Chairman respectively of respondent Sarav Haryana Gramin Bank (hereinafter referred to as the Bank, in short).

3. Petitioner joined services of the bank as a Clerk after having been selected by Banking Recruitment Board sometime in the year 1991. Over a period of time he was promoted as Officer in Scale-I. At the relevant time he was posted at Bichhar Branch in Mewat as Assistant Manager (Field) on probation for the period 22.06.2011 to April, 2013.

4. It is during this period that a fraud was detected in the entries of the bank computer, which the petitioner contends was so detected by him. The petitioner states that it is upon his intimation of the said fraud that an investigation/ enquiry was undertaken by the then Chief Vigilance Officer of the Bank. In the course of said enquiry/ investigation, one Avdhesh Kumar confessed to his involvement in various fraudulent transactions. Not only he confessed, but he also deposited/ refunded the entire sum of Rs.1,40,000/-from his own account which was the money involved/ syphoned in the fraudulent transactions. A charge-sheet under Regulations 18 and 20 read with Regulation 39 (1) of Gurgaon Gramin Bank (Officers & Employees) Service Regulations, 2010 was issued to the petitioner on 09.09.2013 (Annexure P-4) and following charges were framed against him, as per the charge-sheet:-

> *"1.That you committed/caused to be committed fraudulent transactions and wrongful withdrawals through S.B A/C No.21075031854 of Sh.Avdhesh S/O Sh. Narender.*
>
> *2. That you committed/caused to be committed fraudulent transactions and wrongful withdrawals through S.B. A/C No. 21075018051 of Sh. Pavinder. (brother).*
>
> *3. That you committed/caused to be committed fraudulent transactions and wrongful withdrawals through S.B. A/C No. 21075001932 of Sh. Sappu Khan s/o Sh. Chaw Khan. (dead).*

> *4. That you recommended five loans in the names of fictitious persons and caused proceeds thereof to be misappropriated."*

5. The petitioner filed a detailed reply to the charge-sheet and the same after being considered was not found worthy and an Inquiry Officer was appointed to conduct a detailed inquiry qua the charges levelled against the petitioner. Pursuant thereto, a regular inquiry was conducted wherein he was indicted. Owing to the same very fraudulent transactions, the petitioner was dismissed from service by the punishing authority, inter alia, observing that confession of the delinquent Avdhesh Kumar, Business Correspondent does not absolve the petitioner of his responsibilities to ensure that an outsider does not get excess to the computer system of the bank. It was further observed that the petitioner ought to have reported the irregularities to his seniors. Further delinquency attributed to the petitioner was that he failed to keep his password secret which resulted into fraudulent entries for which he was solely responsible.

6. The petitioner has been held delinquent for being responsible in stealthily sharing the password of the Bank computers with Avdhesh Kumar, leading to the fraudulent transactions which have been narrated in detail in charge sheet dated 09.09.2013 (Annexure P-4).

7. Likewise, petitioner N.S. Lamba, was working as Manager (Field) and was charge-sheeted on the same set of allegations vide charge-sheet dated 09.09.2013 (Annexure P-3). The relevant part whereof is reproduced hereinbelow:-

> *"1. That you committed/caused to be committed fraudulent transactions and wrongful withdrawals through S.B A/C No.21075031854 of Sh.Avdhesh S/O Sh. Narender.*

2. That you committed/caused to be committed fraudulent transactions and wrongful withdrawals through S.B. A/C No.21075018051 of Sh. Pavinder.

3. That you committed/caused to be committed fraudulent transactions and wrongful withdrawals through S.B. A/C No.21075001932 of Sh. Sappu Khan s/o Sh. Chaw Khan. .

4. That you arranged five loans in the names of fictitious persons and caused proceeds thereof to be misappropriated."

8. The enquiry officer indicted petitioner N.S.Lamba of the charges vide report dated 09.06.2014 (Annexure P-5) and he was dismissed from service vide impugned order dated 29.12.2014(Annexure P-7) and his appeal against the impugned order was dismissed by the appellate authority vide order dated 15.07.2015 (Annexure P-9), which he has impugned in CWP No. 22190 of 2015.

9. A perusal of charge-sheet issued to Sh. M.K.Saxena vis-a-vis to Sh. N.S.Lamba reveals that both were levelled same charges and the delinquency attributed to them is also similar.

10. The petitioner states that said Avdhesh Kumar is grandson of the landlady of the bank premises and used to hang around in the bank and had a free run of the bank premises. That apart, said Avdhesh Kumar was also employed by the bank as a Business Correspondent. He was also friendly with an office Assistant of the Bank i.e. Pankaj Yadav, who was a paying guest in the house of Avdhesh Kumar. As an office Assistant of the Bank, it was the duty of Pankaj Yadav to close the scroll and cash accounts of the Bank at the end of business hours of the day. Thus, there could have connivance between Avdhesh Kumar and Pankaj Yadav, is the contention of the petitioner, per his pleadings.

11. Petitioner states that during relevant period of delinquency he was on probation for one year and was under training and observation. The Head of the Branch used to give quarterly report about his performance. There was never any doubt about his integrity during his entire career and he performed his duties diligently. He exercised all the caution as per the Banking Instructions to maintain secrecy of his password. However, in the course of duties assigned to him, he had also to remain in the field during duty hours.

12. The petitioner alleges discrimination as one one hand no action has been taken against Avdhesh Kumar except to dispense with his services as a Business Correspondent, while on the other hand, petitioner has been dismissed from service. The petitioner states that no FIR was lodged against Avdhesh Kumar despite his candid confessions involving him in criminal offences committed by him as a sole culprit.

13. The petitioner has also raised the issue of punishing authority lacking the jurisdiction of awarding punishment. He also alleges denial of opportunity to him to make submissions on the proportionality of punishment as no show cause notice was issued prior to awarding of the punishment.

14. In the return filed by the Bank, it is denied that the petitioner detected fraud. Petitioner, in fact, is stated to be cause and part of the fraud established in the departmental proceedings. Avdhesh Kumar was not an employee of the Bank. His association with the Bank was as a Business Correspondent and he became co-conspirator with the petitioner and an instrument to commit the fraud.

15. It is further stated that being a Business Correspondent his job

was to pursuade prospective customers to open new accounts and mobilize the deposits. On his successful efforts, said Avdhesh Kumar was paid stipulated commission by the Bank. It is admitted that he happened to be a grandson of the landlady of the bank premises. As regards the other delinquent bank employee i.e. Pankaj Yadav, Office Assistant, it is stated that separate charge-sheet was also issued to him. Pursuant thereto, on culmination of the departmental proceedings, Pankaj Yadav was awarded major punishment of "withholding of two annual increments for two years", which is stated to be commensurate to his role in the commission of the fraud.

16. As regards the petitioner, it is stated that he was not a new recruit in the Bank. He was posted in the branch on his promotion and was well aware and versed with the working of the Bank. Petitioner was charged for his part as per the charge-sheet dated 09.09.2013. Reply filed to the charge-sheet was duly considered. Both, in the return as well as the punishment order, detailed explanation has been rendered in not accepting the stand of the petitioner qua the charges levelled against him. He has been correctly awarded punishment for serious misconduct committed by him as proved during course of departmental enquiry.

17. After hearing the arguments of both the sides at length and having gone through the pleadings, I shall not proceed to render my findings based on the discussion and reasoning contained hereinafter.

18. At the outset, learned counsel for the petitioners have raised the issue of jurisdiction of the punishing authority in passing the impugned punishment orders under Gurgaon Gramin Bank (Officers & Employees) Service Regulations(for brevity, the Rules). According to them, it is the

Chairman in the case of an Officer who is competent authority to take a decision in the disciplinary matters. In the present case, since the punishment order has been passed by the General Manager and, therefore, the same is liable to be set aside on this short ground alone, it was so contended.

19. The said preliminary objection on the face of it seems attractive. However, the same is not acceptable in view of an amendment in Rules notified vide Notification dated 24.09.2015 (Annexure P-14). In the said notification, it has been clearly stated that competent authority is General Manager and not the Chairman.

20. Confronted with the situation, learned counsel for the petitioners contended that said notification is liable to be set aside on the point of retrospectivity. According to them, any amendment in the service regulations can only be prospective and, therefore, the said notification is liable to be set aside and in any case deserves to be ignored on the said ground.

21. Learned counsel for the petitioners has contended that the service rules, ibid, have been framed under Section 30 of the Regional Rural Bank Act, 1975. The said Act does not confer any power to the delegatee to make service rules/ regulations with retrospective effect.

22. These arguments of learned counsel for the petitioners are also misplaced. The said Notification (Annexure P-14) was unsuccessfully challenged by the Officers working in Gurgaon Gramin Bank before this Court by way of a writ petition. A Division Bench of this Court vide its decision dated 21.03.2016 (Annexure R-6) did not find favour with these arguments. While dismissing the writ petition, this Court upheld the

retrospectivity of the said Notification. Subsequently, a review petition before this Court as also an SLP before Hon'ble the Supreme Court of India were filed but both were dismissed vide orders dated 02.09.2016 (Annexure R-6/1) and 28.11.2016 (Annexure R-6/2), respectively. Notification dated 24.09.2015 has, thus, met judicial approval right up to the Apex Court and has since attained finality. It cannot, therefore, be re-agitated in the present proceedings. Any ground to re-agitate the same which is not dealt with in previous proceedings would naturally be hit by the principle of constructive *res judicata.*

23. On preliminaries, learned counsel for the petitioners have also strenuously argued that no show cause notice was since issued to the petitioners regarding the proposed punishment awarded to them and, therefore, the impugned punishment orders are liable to be set aside. Reliance has been placed in this regard on the principles enunciated by the Apex Court in *Union of India & Ors. Vs. Mohd. Ramzan Khan, 1991(1) SCC 588 and Managing Director, ECIL, Hyderabad Vs. B. Karunakar, 1993(4) SCC 727.* Based thereon, contended learned counsel for the petitioners, that the denial of opportunity to the petitioners to make their submissions on the proportionality of punishment is a serious violation of their vested rights. In view thereof, they seek quashing of the punishment order.

24. Non-issuance of show cause notice has not been denied in the written statement filed by the Bank. The stand taken in the corresponding paragraph is that statutory rules were followed during disciplinary proceedings and opportunity of defence was provided to the petitioners.

25. Having gone through the record of the disciplinary

proceedings, it is clearly borne out that the petitioners throughout did not show any dis-satisfaction of denial of opportunity to defend themselves or to make any submission at any point of time. Neither in their replies filed to the charge-sheet nor in the objections filed to the enquiry report nor even at the time of personal hearing prior to the awarding of the punishment, any such objection has been taken that they were not given opportunity to make their submissions on proportionality of proposed punishment. There is, thus, no violation of the principles enunciated by the Apex Court in the judgments, *ibid*, as relied upon by learned counsel for the petitioners.

26. On merits, strong emphasis has been laid by learned counsel for the petitioners on the fact that the Business Correspondent Avdhesh Kumar not once but three times confessed that without knowledge of bank officials, he had stolen the password of the Bank accounts and thus committed the fraudulent transactions. At first instance confession was made during initial investigation of the transactions; secondly, before the Chief Vigilance Officer; and thirdly, in the course of departmental enquiry. Not only, he confessed his liability, the Business Correspondent also deposited the entire amount (Rs.1,40,000/-) involved in the fraudulent transactions. The petitioners, thus, were not having any knowledge of fraudulent transactions since their passwords were stealthily used by the Business Correspondent. The enquiry officer and the punishing authority completely overlooked this vital piece of evidence, contended the learned counsel for the petitioners.

27. These submissions of learned counsel for the petitioners are also misplaced as perusal of the enquiry report and the punishment order reflect that the defence put forth by the petitioners has been threadbare dealt therein. I am in agreement with the findings returned by the Enquiry Officer,

the relevant of which is extracted hereinbelow:-

> "*The defence has relied heavily on the closure of all above loan accounts by Sh. Avdhesh and has also alluded to his confessional statement (DEX-1) to press the point that Avdhesh misused the pass words of other branch officials to open the loan accounts. Further, the defence has brought it on record that the loan accounts GGB-JK, HBL and KCC loan accounts in the name of Assruddin and KCC A/C in the name of Subhan Khan were opened under the ID of Branch Manager.*
>
> *However, regardless of the closure of all loan accounts and usage of the ID of Branch Manager in opening four loan accounts, the lapses on the part of CO have not been diluted. As the officer dealing with loan portfolio, the CO was expected to be diligent enough to ascertain the existence and whereabouts of the loan-seekers and ensure proper documentation before creation of loan accounts in the computer system. The very fact that the borrowers did not exist and the circumstances in which the above loans were arranged unmistakably point to the acts of omission and commission on the part of CO. The documentary evidences produced on behalf of Management are potent and incontrovertible enough to sustain the allegations made against the CO under charge No.5. The fact that Avdhesh was able to perform the tasks which he was not authorized to perform is a poor reflection on the capability of the CO. Further the admission by Avdhesh in his two written statements about his having carried out the fraudulent transactions, does not obliterate the lapse committed by the CO.*"

28. The above sentiments of the Enquiry Officer have more elaborately echoed by giving cogent reasoning in the impugned punishment order, as borne out from the following relevant extract:-

> "*I observe that admission of Sh. Avdhesh, business*

correspondent, to fraudulent transactions, reimbursement of entire amount involved in fraudulent transactions/ loans by Sh. Avdhesh and misuse of his password by others as pleaded by him in his written submission on the Enquiry Report, are not tenable pleas. There are scores of fraudulent entries and disbursement of as many as five fictitious loans to which the CSO is inseparably linked in his capacity as Assistant Manager(Field). Further, the argument made by the CSO that when borrowers were not in existence, how he could recommend loans in their names, is not acceptable. Being in charge of credit portfolio of the branch, the CSO ought to have kept himself abreast of the loan disbursed at branch level. He can not take refuge under the specious plea that his pass word was misused by others.

I am convinced that the enquiry findings are well reasoned, speaking and based on evidences. I have therefore accepted the enquiry report in toto. The occurrence of scores of fraudulent transactions and disbursement of fictitious loans amply show that CSO in extremely poor light. The Bank's image has been severely dented by these acts. Public faith is of paramount importance for a banking organization and this faith has been shaken by dishonest acts of fraudulent transactions and fictitious loans, which the CSO has committed/ caused to be committed. These have been unmistakably proved against the CSO in the enquiry to the extent as stated in the enquiry report.

Having carefully gone through the related material of the case, I am convinced that Sh. M.K. Saxena, CSO has acted in flagrant violation of systems and procedures of the Bank and acted with lack of integrity and faithfulness to the Bank. His acts of recommending loans in fictitious names, transferring proceeds of fictitious loans to SB accounts of other persons amount to acts of moral turpitude. The CSO tarnished image of the Bank and acted detrimental to interests of the Bank. The integrity of a Bank Officer should be above board. By *committing aforesaid acts, the CSO exhibited lack of integrity."*

29. As regards the proportionality of punishment, illustrative reliance has been placed by learned counsel for the petitioners citing the case of Sh. Anil Kumar Garg, Manager and Pankaj Yadav, Office Assistant who have been let off with minor punishment. Notwithstanding, that they faced the same charges of fraudulent transactions by misuse of passwords by Avdhesh Kumar. It is also contended that even Avdhesh Kumar, the real culprit, despite his candid confession, has been let off without any FIR and/ or institution of appropriate criminal proceedings.

30. Per contra, learned counsel for respondent Bank argued that the petitioner cannot seek parity in the matter of awarding of punishment as each case has to be dealt with in its peculiar circumstances. No universal hard and fast yardstick can be laid down for making any uniform pattern in awarding the punishment.

31. Factually, it is not controverted that said Anil Kumar Garg and Pankaj Yadav faced similar charges of misuse of password by Avdhesh Kumar. Having considered the totality of circumstances and also keeping in view the petitioners' prior unblemished service record, I am of the view tha the petitioners have been inflicted undue harsh punishment. They too are entitled to the similar benefit of doubt since their passwords were also stolen by Avdhesh Kumar. Especially, in view of the candid confession of said Avesh Kumar of having stealthily use the password without the knowledge of bank officials/petitioners.

32. As regards the Bank's lapse in prosecuting Avdhesh Kumar by instituting criminal proceedings is concerned, the same is neither the subject matter of the present proceedings nor even otherwise it is for this Court to

make any observations on the respondent Bank's decision in not prosecuting the said Avdhesh Kumar. I, therefore, refrain from making any comments on the same.

33. Dismissal from service is the harshest punishment prescribed in the service jurisprudence and, therefore, must be resorted with extra caution. The respondent Bank has adopted the discriminatory attitude in inflicting the punishment of dismissal on the petitioners vis a vis other similarly situated officials as already narrated in preceding part hereinabove. Awarding of major punishment of dismissal from service is akin to economic death penalty for an employee. Not only it is loss of livelihood for the employee, but the entire family is reduced to live in penury for rest of life. Entire family suffers consequences apart from dismissed employee not having any chance of getting fresh employment owing to the stigma attached to dismissal/removal from service. Reliance may be placed on Union of India & Ors. Vs. Sri Sankar Prosad Ghosh & Anr. 2008(5) SLR 170, wherein it has been held as under:-

> "*13. It would be naive to say as on today, that livelihood is not a part of right to life. By this time, by a large number of decisions, it has been held by the Hon'ble Supreme Court as well as High Courts in this country that livelihood is an integral facet of right to life. In this connection, a decision of the Hon'ble Supreme Court rendered in the case of State of Himachal Pradesh v. Raja Mahendra, reported in AIR 1999 SC 1786. may be remembered.*
>
> *14. Dismissal from services undoubtedly is taking away the livelihood of a person at an advanced stage because at that stage, it is impossible for a person to get any employment elsewhere as the order of dismissal will be treated as a disqualification. Loosing a job in an establishment amounts to a civil death, as the concerned person will not be in a position*

to earn livelihood at the advanced stage, when all his energies and endeavours have almost come to a diminishing stage."

34. Reverting to the present case, relevant Service Regulations governing the award of punishment qua the Bank officials are reproduced hereinbelow:-

> "***39. Penalties***- *Without prejudice to the foregoing regulations of this Chapter, an Officer or employee who commits a breach of these regulations or who displays negligence, inefficiency or indolence or who commits acts detrimental to the interest of the Bank or in conflict with its instructions, or who commits a breach of discipline or is guilty of any other acts of misconduct, shall be liable for any one or more penalties as follows, namely-*
>
> ***1. Officers:***
>
> ***(a) Minor Penalties***
>
> *(i) censure*
>
> *(ii) withholding or stoppage of increments of pay without cumulative effect:*
>
> *(iii) withholding of promotion;*
>
> *(iv) recovery from emoluments or such other amounts as may due to him, of the whole or part or any pecuniary loss caused to the Bank by negligence or breach of orders;*
>
> *(v) reduction to a lower stage in time scale of pay for a period not exceeding two years without cumulative effect.*
>
> ***(b) Major Penalties****:*
>
> *(i) save as provided in item (v) of clause (a) of sub-regulation(1) of regulation 39, reduction to a lower stage in time scale of pay for a specified period with further directions as to wheher or not the officer shall earn increments of pay during the period of such reduction and whether on expiry of such period the reduction shall or shall not have the effect of postponing the future increments of his pay.*
>
> *(ii) reduction to a lower grade or post.*
>
> *(iii) compulsory retirement.*

> *(iv) removal from service which shall not be a disqualification for future employment;*
>
> *(v) dismissal which shall orinarily be a disqualification for future employment."*

35. Keeping in view regulations 38, *ibid*, and the discussion and reasoning contained hereinabove and the role attributed to the petitioners qua the delinquency alleged as per charge-sheet, the impugned punishment orders are modified to the extent that the petitioners shall be reinstated into service with reduction to a lower grade immediately to the post held by them. The petitioners shall also be entitled to the consequential benefits arising therefrom but shall not be entitled to any wages for the period they were out of service pursuant to the punishment order.

36. Both the petitions are disposed of in the above terms.

(ARUN MONGA)
JUDGE

27.06.2019
Jiten/smriti

1. Whether speaking/ reasoned : Yes/ No
2. Whether reportable : Yes/ No