

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

CWP-7528-2020(O&M)

Date of decision:-07.09.2021

Kuldeep Singh

...Petitioner

Versus

Sarav Haryana Gramin Bank and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Vijay Pal, Advocate
for the petitioner.

Mr.Bhushan Bhatia, Advocate
for the respondents.

H.S. MADAAN, J.

Case taken up through video conferencing.

1. Petitioner – Kuldeep Singh, aged about 33 years, presently working as Officer Scale-II (General Banking Officer) with respondent No.1 – Sarav Haryana Gramin Bank, Rohtak has brought the instant writ petition under Articles 226 and 227 of the Constitution of India against respondents i.e. his employer Sarav Haryana Gramin Bank, Head Office, Rohtak and its General Manager, craving for issuance of a writ in the

nature of certiorari quashing the impugned charge-sheet dated 25.2.2020, copy Annexure P13 as well as order dated 21.4.2020, copy Annexure P17 whereby departmental enquiry has been instituted against him.

2. As per the case of the petitioner, he had initially joined service of respondent No.1 as Officer Junior Management Scale – I after successfully clearing IBPS Common Written Examination vide joining letter dated 1.7.2013 and he was posted at Haryana Gramin Bank, Branch Office, Landhari, District Hisar for one week training; thereafter vide order dated 22.11.2014, he was transferred to Branch Office, Hasangarh; he worked there with devotion and dedication; he had applied for appointment on higher post of Officer Scale-II (General Banking Officer); he cleared written examination and was selected as Officer Scale-II (General Banking Officer) by way of direct recruitment in respondent No.1 – bank; petitioner has submitted his resignation from the previous post and joined as Officer Scale-II (General Banking Officer) with respondent No.1 - bank on 24.4.2017; petitioner was issued explanation call/letter dated 26.7.2019 with regard to alleged allegations pertaining to year 2015-16 relating to tenure of his previous engagement and employment as Officer Junior Management Scale – I and he was asked to explain about three transactions relating to period of July 2015 and March-April 2016; as a matter of fact audit of the concerned branch of the bank had been conducted in the years 2016, 2017 and 2019 and no irregularity was detected; however, as per the allegations in the letter calling for explanation of the petitioner, an investigation was conducted by the respondent No.1 - bank on 4.7.2019 and 5.7.2019; petitioner was

not associated therewith; petitioner submitted reply to the said communication on 30.8.2019 explaining that the alleged amount of Rs.25,000/- deposited impersonal account was towards the adjustment of a loan account through OTS, which was adjusted later only and regarding the transaction of amount of Rs.56,656/- dated 29.3.2016, it was clarified by the petitioner that the same pertained to subvention of 14 closed KCC account and since there was no separate guidelines regarding the adjustment of subvention amount relating to closed KCC accounts, keeping in view the closing of the annual financial year, the said amount was credited to the impersonal account of the bank; furthermore regarding the transactions dated 26.4.2016 of an amount of Rs.4,054/-, it was transferred to SF account from impersonal bank account as subvention of one another closed KCC account and out of total amount of Rs.57,321/- withdrawn on 30.6.2016, Rs.56,656/- pertained to subvention amount of 14 KCC closed accounts which were paid to the beneficiaries against cash receipts since there was no such guideline at that time against the cash receipt prohibiting the payment of subvention of closed KCC account; petitioner had explained each and every allegation vide written reply, copy Annexure P11, however, despite that the respondent No.1 – bank served the petitioner with charge-sheet on 25.2.2020, copy Annexure P13, which according to the petitioner is illegal, arbitrary and not sustainable in the eyes of law, as such is liable to be set aside with various reasons to wit, that it had been issued with mala fide intention after passage of long period of 4-5 years of the alleged controversy; that charge-sheet pertains to the period when petitioner was serving as Officer Junior Management

Scale – I at Hasangarh, whereas presently he is no longer engaged with the respondent in that capacity having duly resigned from his previous service vide resignation letter dated 16.4.2017, copy Annexure P6 and he was relieved from that post on 21.4.2017 after providing NOC by respondent department dated 11.7.2017, copy Annexure P8. Various other reasons have been given while finding faults with the charge-sheet and order directing holding of departmental enquiry against the petitioner. In the end, the petitioner prayed for acceptance of the writ petition.

3. On notice, the respondents appeared and filed detailed written reply contesting the petition *inter alia* raising preliminary objections that the petition brought by the petitioner is not maintainable as he has no locus standing to file the same; the petitioner is estopped by his own act and conduct from filing the present petition against the answering respondents; the petition is misconceived containing baseless, unfounded and unrelated statements about the charges in the charge-sheet and order initiating departmental enquiry against the petitioner; the petitioner has not approached the Court with clean hands, as such he is not entitled to any relief; as a matter of fact when the petitioner was posted as Assistant Manager at Branch Office, Hasangarh, District Hisar from 24.11.2014 to 30.7.2016 while he was resigned from that post on 21.4.2017 and he had rejoined as Manager under fresh recruitment on 24.4.2017 and was posted as Manager at B.O. Uklana, District Hisar w.e.f. 8.11.2018; that during the course of inspection of the branch, it transpired that petitioner during his posting as Assistant Manager at B.O. Hasangarh, District Hisar from 24.11.2014 to 30.7.2016 and as Manager at B.O. Uklana since 8.11.2018

had committed the following acts of omission and commission:

“He transferred Rs.56646/- i.e. amount of subvention of 14 closed KCC accounts to impersonal account No.21-64 of B.O. Hasangarh on 29.3.2016 instead of transferring the same to saving accounts of the customers; withdrew Rs.57,321/- (Annexure R-2) including above amount of Rs.56646/- and an amount of Rs.675/- pertaining to a cheque of Aarti D/o Mukesh from impersonal a/c No.21-64 of B.O. Hasangarh in cash himself on 30.6.2016 instead of paying to the actual beneficiaries and pocketed the amount himself; withdrew Rs.24,850/- from above impersonal a/c no.21-64 on 7.7.2015 without any details and particulars of the transaction unauthorizedly; acted in violation of systems, procedures and guidelines of the bank; misutilized his official position; used public money for his personal gain; acted with lack of integrity and faithfulness for the Bank. Thus, he acted in fraudulent manner. An investigation was got conducted in the above account on 04.07.2019 and 05.07.2019. Since it was an investigation, the petitioner was not involved in that. However, after conclusion of investigation in the matter, the petitioner produced receipts reportedly from said 14 customers vide his letter dated 05.07.2019 (Annexure – R/1) to Branch Manager, B.O. Hasangarh, thus he falsified/created records to cover up his alleged acts of omission and commission. As such, he acted with malafide and ill motive; failed to serve the Bank honestly and faithfully and to use his utmost endeavor to promote the interest of the Bank and acted

detrimental to the interest of the Bank. His above acts involve Moral Turpitude and are unbecoming of an Officer.”

Further, after completion of the probe an explanation letter dated 26.7.2019 (P10) was issued to the petitioner to which he submitted reply dated 30.8.2019 (Annexure P11); thereafter petitioner was issued charge-sheet dated 25.2.2020 for imposition of major penalty in terms of Regulation 39 of Sarav Haryana Gramin Bank (Officers and Employees) Service Regulations, 2010; that no question of law requiring determination arises in the present writ petition.

4. The petitioner filed rejoinder controverting the allegations in the written reply filed on behalf of respondents, whereas reiterating the averments in the writ petition.

5. I have heard learned counsel for the parties besides going through the records.

6. The petitioner is admittedly an employee of respondent No.1 – Sarav Haryana Gramin Bank, Head Office at Rohtak. Though earlier he had joined the bank as Officer Junior Management Scale – I, from which post he had resigned later on having cleared examination for appointment as Officer Scale-II (General Banking Officer) but his employer remained the same. As a result of a probe having been conducted, it was revealed that during the period the petitioner was posted as Assistant Manager at Branch Office, Hasangarh, District Hisar from 24.11.2014 to 30.7.2016 and as Manager at B.O., Uklana, District Hisar w.e.f. 8.11.2018, he had indulged in misconduct inasmuch as misappropriating the money belonging to the customers of the bank and acted in violation of rules

regulations using public money for his personal gain and had committed fraud. His explanation was called. He gave his response, which was obviously not found satisfactory, therefore, he was served with a charge-sheet. His reply was obtained, obviously did not satisfy his employer/punishing authority, therefore, a departmental enquiry has been instituted against him. The petitioner is feeling aggrieved unnecessarily. There is relationship of employee and employer between the petitioner and respondent No.1 – bank. The employer has certainly a right to seek explanation from the employee in that regard. The employee should not show over-anxiety or over-reaction simply because the employer has asked him/her to explain certain facts. The employer of the petitioner remains the same. Earlier the petitioner was serving with respondent No.1 – bank as Officer Junior Management Scale – I and thereafter as Officer Scale-II (General Banking Officer). As per the written reply submitted on behalf of the respondents, the misconduct attributed to the petitioner pertains to the period, he was posted as Assistant Manager at Branch Office, Hasangarh, District Hisar from 24.11.2014 to 30.7.2016 and as Manager at B.O., Uklana, District Hisar w.e.f. 8.11.2018 in higher capacity. The alleged act of omission and commission on the part of the petitioner do not get washed away with his resignation from the post held by him earlier and his re-joining on higher post after selection.

7. Counsel for the petitioner has referred to various judgments in support of his arguments, first being **R.T.B. Rai, Junior Engineer, Public Works Department, Punjab Versus State of Punjab and others, 2011(3) S.C.T. 102** by a Single Bench of this Court. That case had

different facts where the petitioner, who had been working with Public Works Department had been charge-sheeted for the misconduct alleged to have been committed by him during his earlier employment with Punjab Small Industries Export Corporation, a different entity. It was for the said reason, the Court had observed that a misconduct in a earlier employment cannot be a subject of a departmental enquiry unless by some conduct rules of present employer are violated. But here the employer of the petitioner remains the same. Therefore, this judgment does not help the petitioner.

8. Coming to the next judgment i.e. *Vaidhya Dev Shankar Sharma Versus The State of Rajasthan and Three others*1994(2) WLC 632 by a Single Bench of Rajasthan High Court, Jaipur Bench, wherein in para No.15 it was concluded that charge-sheet is baseless and warrants interference by the Court. However, that judgment had different facts and the context in which the observations had been made was quite distinct. It was given under Rajasthan Civil Service (Classification, Control & Appeal) Rules, 1958 and Rajasthan Civil Services (Service Matters Appellate Tribunals) Act, 1976.

9. In the present case, the employer had conducted an initial probe in the matter, issued show-cause notice to the petitioner, obtained his reply and thereafter served him with the charge-sheet. The petitioner had an opportunity of responding to the charge-sheet which he did though the reply submitted by him was not found to be satisfactory and a departmental enquiry against him has been instituted. He can participate therein by cross-examining the departmental witnesses, producing

evidence in support of his case and then addressing arguments. Even if the enquiry report goes against him and some punishment is awarded, he can file appeals to the departmental authorities as provided under service rules and can seek legal remedy also. Under the circumstances, there is no occasion to quash the charge-sheet served upon the petitioner and order appointing enquiry Officer.

10. The third judgment referred to by learned counsel for the petitioner is **State of M.P. Versus Bani Singh and another** by Hon'ble Apex Court passed in Civil Appeal No.3045 of 1988 arising out of CAT Jabalpur in O.A. No.201 of 1986. That judgment had also different facts. The ratio therein was that adverse remarks against which a representation is pending cannot be taken as withholding promotion of a Government employee. There a departmental enquiry was initiated after 12 years, as such was quashed. Whereas it is not so in the present case.

11. With regard to the next judgment **P.V. Mahadevan Versus M.D., Tamil Nadu Housing Board** passed by Hon'ble Apex Court in Civil Appeal No.4901 of 2005 arising out of SLP(C) No.26757 of 2004, there also the charge-sheet had been issued after 10 years of alleged irregularity contending that irregularity came to light in audit report after 4-5 years. It was observed that allowing departmental proceedings at such distance of time will be very prejudicial to the appellant, charge/memo was quashed.

12. In this case, the misconduct relates to the period 24.11.2014 to 30.7.2016 and 8.11.2018 onwards. The charge-sheet was issued on 25.2.2020, therefore, there is not very long delay in service of the charge-

sheet.

13. I do not find any merit in the writ petition. No ground is there to exercise power under Article 226 of the Constitution of India, which is to be done in very exceptional cases and not in routine.

14. The instant writ petition is dismissed accordingly.

07.09.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No