IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-18742-2020 (O&M)
Date of decision : 05.01.2021

Kuldip Singh ...Petitioner

Versus

Bank of Baroda and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

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

****

ANIL KSHETARPAL, J.

This is second round of writ petition. In the previous round, the petitioner filed CWP-9988-2017, challenging the order dated 09.12.2015, dismissing him from the service, which was affirmed in the appeal on 29.10.2016. The order dated 08.11.2016, forfeiting the gratuity earned, by the petitioner, was also the subject matter of challenge. The High Court after examining the facts of the case partly allowed the writ petition and remitted the matter back, to the Appellate Authority, for reconsideration on the issue of discrimination on account of penalty imposed vis-à-vis Mr. Mohit Mahajan. The operative part of the order reads as under:-

> *"Thus, in view of the above, the order dated 08.11.2016 (Annexure P-14) also suffers from a legal infirmity. Accordingly, the present writ petition is partly allowed, to the extent that the order dated 08.11.2016 (Annexure P-14) is quashed and the matter is remanded to the Appellate Authority, for reconsideration on the issue of discrimination qua Mr. Mohit Mahajan, as noticed above. Resultantly, the order dated 09.12.2015 (Annexure P-10) in pursuance of*

which, gratuity of the petitioner has also been forfeited, is also set aside."

In compliance with the aforesaid order, the Appellate Authority constituted under Regulation 17 of the Bank of Baroda Officer Employees' (Discipline and Appeal) Regulation 1976 (hereinafter to be referred as "the Regulations of 1976"), reconsidered and again, penalized the petitioner with "dismissal which shall ordinarily be disqualification for future employment".

In the considered view of this court, the question which arises for adjudication is -

> **"If in the first round before the High Court in a writ petition, the petitioner does address arguments on an issue, which might or ought to have litigated, and an order of limited remand is passed in the first round, whether it would be permissible for him to take up the issue already abandoned, subsequently, in the 2nd round or whether such plea would be barred on the basis of the doctrine of constructive res-judicata?"**

Certain facts are required to be noticed. The disciplinary proceedings, for major penalty, were initiated against the petitioner, for having committed serious lapses/irregularities while advancing various loans/advances when he was posted as a Senior Branch Manager at Phagwara Branch, from 18.06.2011 to 27.06.2012. It was alleged that due to serious lapses and irregularities, loans worth Rs.10,561.75 lacs, were sanctioned and disbursed without proper documents and security resulting in compromising the position of the Bank, to recover the amount. The inquiring authority vide its report dated 08.08.2015, found him guilty of all the seven charges. Consequently, the disciplinary authority ordered penalty as noted above. It was further ordered that his suspension period shall be treated as period not spent on duty. An appeal, against the order of disciplinary authority, was dismissed, resulting in filing of the previous writ petition.

This Court has heard learned counsel for the petitioner at length and with his able assistance perused the paper book.

Learned counsel for the petitioner has made the following submissions:-

1) Appellate Authority has failed to consider the scope of Regulation 17 (4) of the Regulations of 1976.

2) Appellate Authority has failed to consider the proportionality of the quantum of punishment.

3) There is discrimination on the quantum of punishment between the petitioner and Mr. Mohit Mahajan.

Regulation 17 of the Regulations of 1976 reads as under:-

"Regulation 17

(1) An officer employee may prefer an appeal to the Appellate Authority within forty five days from the date of receipt of the order imposing upon him any of the penalties specified in Regulation 4 or against the order of suspension referred to in regulation 12.

Provided that the Appellate authority may entertain the appeal after expiry of the said period, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.

(2) The appeal shall be presented to the Appellate Authority with a copy being forwarded by the appellant to the

authority which made the order appealed against. It shall contain all material statements and arguments on which the appellant relies but shall not contain any disrespectful or improper language, and shall be complete in itself.

(3) The authority which made the order appealed against shall, on receipt of a copy of the appeal from the appellant, forward the same with its comments thereon together with the relevant records to the Appellate Authority within a period not exceeding forty five days from the date of receipt of the appeal.

(4) The Appellate authority shall on receipt of the comments and records of the case from the authority whose order is appealed against, consider whether the order of suspension/ findings are justified or whether penalty is excessive or inadequate and pass appropriate orders. The Appellate authority may pass an order confirming, enhancing, reducing or setting aside the penalty/suspension or remitting the case to the authority which imposed the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case.

Provided that:

> *(i) If the enhanced penalty which the Appellate Authority proposed to impose is a major penalty specified in clauses (f), (g), (h), (i), and (j) of regulation 4 and an inquiry as provided in regulation 6 has not already been held in the case, the Appellate Authority shall direct that such an enquiry be held in accordance with the provisions of regulation 6 and thereafter consider the record of the inquiry and pass such orders as it may deem proper:*
>
> *(ii) if the Appellate Authority decides to enhance the punishment but an enquiry has already been held as provided in regulation 6, the Appellate Authority shall*

give a show-cause notice to the officer employee as to why the enhanced penalty should not be imposed upon him and shall pass final order after taking into account the representation, if any, submitted by the officer employee.

(5) The Appellate authority shall dispose of the appeal within a period of ninety days from the date of the receipt from the appellant:

Provided that the time limit specified in this regulation shall not apply to cases having a vigilance angle and where major/minor penalty proceedings against the officer employee have commenced on recommendations of the Police or Central Bureau of Investigation or Central Vigilance Commission, as the case may be, investigating the matter.

(6) The cases lying pending over ninety days shall be reviewed periodically by the Appellate authority and reasons for non-disposal of the cases shall be recorded in writing."

On careful reading of the aforesaid Regulation, it is apparent that the Appellate Authority is required to examine the case once again. The Appellate Authority would examine, whether the findings are justified or whether the penalty is excessive or inadequate and thereafter pass an order. The argument of learned counsel is that the Appellate Authority has not reappraised the findings and, therefore, the order is liable to be set aside. In this regard, it may be noticed that the Appellate Authority was re-examining the appeal pursuant to the order, passed by the High Court, on 04.12.2019. The writ petition was only partly allowed and the matter was remitted, to the Appellate Authority, for reconsideration on the issue of discrimination with reference to penalty.

On careful reading of the judgment passed by the High Court, in the Ist round, it is apparent that the petitioner did not urge that the decision, of the appellate authority, is in violation of Regulation 17 (4). It would not be in the interest of public policy to allow the parties to urge some of the issues, subsequently, which could have been taken up in the Ist round. The principle of Constructive resjudicata is applicable to the writ petitions. Reliance in this regard can be placed on judgment of the Supreme Court, in ***Forward Construction Co. and others Vs. Prabhat Mandal (Regd.) Andheri and others (1986)1 SCC 100*** which was followed by 5 Judges Bench, in ***Direct Recruits Class II Engg. Officers Assn. Vs. State of Maharashtra (1990) 2 SCC 715***. It was held that an adjudication is conclusive and final not only to the actual matter determined but as to every other matter which the parties might or ought to have litigated and have had decided as incidental to or essentially covered with subject matter of the litigation and every matter coming into the legitimate purview of the original action, both in respect of the matters of claim and defence. Hence, this Court does not find substance in the arguments of learned counsel that the appellate authority has not complied with Regulation 17(4) and therefore, the order under challenge is liable to be set aside. It may be noted here that previously, the Appellate Authority had dismissed the appeal vide order dated 29.10.2016. The Appellate Authority, in the aforesaid order, had already discussed all the aspects of the matter in accordance with Regulation 17 (4). In this round, the Appellate Authority was required to re-examine the case only in the context of the order passed by the High Court.

In that context, the Appellate Authority had re-examined the matter. The Appellate Authority has noticed the reasons for difference in the penalty between the two, in the following manner:-

> *"After going through the relevant records and making analysis of the case in the light of the above judgement of the Hon'ble High Court of Punjab & Haryana at Chandigarh, it is revealed as follows:-*
>
> ***(a) Charges held as proved against Mr. Kuldip Singh and Mr. Mohit Mahajan:***
>
> *It is observed from the above that seven charges are held as proved against Mr. Kuldip Singh, whereas six charges are held as proved against Mr. Mohit Mahajan, As such, the total number of charges held as proved against Mr. Kuldip Singh is on the higher scale than Mr. Mohit Mahajan.*
>
> ***(b) Findings of the Enquiry Officer are justified or otherwise:***
>
> *It is mentioned at Page No.14 of the Appellate Order dated 29.10.2016 that all the seven charges levelled against Mr. Kuldip Singh have been held as proved. It is, thus, evident that the then Appellate Authority has taken note of the inquiry findings arrived at by the Inquiring Authority in his inquiry report while dealing with the appeal dated 01.02.2016 of Mr. Kuldip Singh. In addition to the above, the then Appellate Authority has mentioned at Page No.16 of the above Appellate Order that the penalty was awarded to Mr. Kuldip Singh according to the allegations/charges held as proved against him in the inquiry. Based on the above references made in the Appellate Order and taking into consideration the facts and circumstances of the case, I am of the view that the findings of the Inquiring Authority are jusitifiable and hence, acceptable.*
>
> ***(c) Reasoned order with regard to the penalty imposed on***

Mr. Kuldip Singh vis-a-vis his junior Mr. Mohit Mahajan who has been let off comparatively with a lessor punishment as observed by the Hon'ble Court:

(i) Reasons for imposing the penalty of "Dismissal which shall ordinarily be disqualification for future employment" on Mr. Kuldip Singh :

1. Mr. Kuldip Singh was functioning as Senior Branch Manager at Phagwara Branch during the period from 18.06.2011 to 27.06.2012.

2. Being the Branch Head, Mr. Kuldip Singh was vested with the requisite authority/discretionary power to sanction/disburse the loans and advances to the borrowers under various schemes of the bank. He was also required to ensure that the loan applications of the borrowers, which were supposed to be sanctioned by the higher authorities, are processed/appraised properly at the branch level before recommending for sanction of loans to the said borrowers.

3. Mr. Kuldip Singh, joined the services of the bank on 22.09.1977 and he had already put in almost 34 years of service in the bank at the time of taking over charge or Phagwara Branch as Branch Head of the said branch on 18.06.2011.

4. Mr. Kuldip Singh had already discharged his duties as Branch Head/Deputy Branch Head of many other branches such as Goraya Branch, Maurya Enclave Branch, Karampura Branch, East of Kailash Branch, Zaveri Bazar Branch, Tordeo Road Branch and Altamount Road Branch prior to functioning as Branch Head of Phagwara Branch. In other words, it is evident that Mr. Kuldip Singh had already acquired substantial years of experience and knowledge with regard to lending norms/procedures prevailing in the bank as well as various lending schemes/ products of the bank.

5. Mr. Kuldip Singh took over the charge of Phagwara Branch as Branch Head on 18.06.2011, whereas Mr. Mohit Mahajan joined the above branch on 14.12.2011 as a probationary offlicer. It is, thus, evident that Mr. Kuldip Singh had reported at Phagwara Branch six months prior to reporting of the above junior official at the said branch. By virtue of joining at the branch six months before Mr. Mohit Mahajan, Mr. Kuldip Singh had not only gathered adequate knowledge about the local trade, customs, business, practices etc., but also he had acquired the requisite experience in assessing the business potential in the locality/ adjoining areas as well as adopting suitable strategies for improving the business of the branch.

6. It is evident from Page No. 53 to 55 of the final order dated 09.12.2015 passed by the DA that the bank is exposed to financial loss in respect of 56 accounts where allegations are held as proved against Mr. Kuldip Singh. Out of the said 56 accounts, loans/advances relating to 09 accounts involving an amount of Rs.602.75 lakhs were already sanctioned/ disbursed during the tenure of Mr. Kuldip Singh and prior to reporting of Mr. Mohit Mahajan at the branch.

7. Being the Branch Head and sanctioning authority, Mr. Kuldip Singh was supposed to take judicious decision with regard to sanction of loans to the borrowers or otherwise based on the requisite information/data available with the branch. In that context, recommendation/suggestion made by the junior official of Mr. Kuldip Singh namely Mr. Mohit Mahajan for sanction of the loans to the borrowers or otherwise was not binding upon him under any circumstances. That apart, he was also required to ensure that the loan proposals, which were sanctioned by the higher authorities, were processed properly as per the lending norms prevailing in the bank at the branch level before *forwarding the same to the higher authorities for sanction with recommendation of the branch.*

8. Prior to taking decision for sanction of the loans to the borrowers, it was incumbent upon Mr. Kuldip Singh to cross-check the various financial parameters/crucial details pertaining to the borrowers and ensure that bank's interest will be duly protected by virtue of sanction of loans to the borrowers. Irregularities/lapses have been attributed to Mr. Kuldip Singh relating to 104 accounts involving Rs.10541.75 lacs. Out of -83- allegations mentioned as common irregularities, -57- allegations are held as proved. That apart out of -73- allegations mentioned as account wise irregularities, -46- allegations are held as proved, which indicates that substantial number of allegations have been held as proved against him.

9. It is mentioned at Page No.18 of the Appellate Order that the Bank is exposed to likely financial loss aggregating to Rs.28.98 Crores in respect of the loan accounts, the details of which are provided at Page No.53 to 55 of the final order dated 09.12.2015 passed by the Disciplinary Authority.

(ii) Reasons for imposing the penalty of "Reduction by-1-stage in the time scale of pay for one year with further direction that the officer will not earn increments of pay during the period of such reduction and as the reduction will have the effect of postponing his future increments of pay" on Mr. Mohit Mahajan:

1. Mr. Mohit Mahajan joined the services of the bank on 06.09.2011 and as such, he had gathered only 3 months of experience at the time of reporting at Phagwara Branch. In other words, Mr. Mohit Mahajan was under probationary period at the relevant period and he was a novice in banking at that time.

2. A comparison of job role and responsibilities of Mr. Kuldip Singh and Mr. Mohit Mahajan reveals that Mr. Kuldip Singh was acting as a mentor of Mr. Mohit Mahajan. Suffice it to say, Mr. Mahajan was functioning under the active supervision and guidance of Mr. Kuldip Singh. It was fully within the knowledge of Mr. Kuldip Singh that Mr. Mohit Mahajan was learning banking at that time and he was in the process of grooming as an officer in the bank.

3. The allegations have been made against Mr. Mohit Mahajan primarily at the processing/recommending level and he was in Phagwara Branch just for 8 months. He was relieved from Phagwara Branch on 31.07.2012 so as to enable him to acquire further knowledge in the banking at another branch i.e. Sangrur Branch. It will not be out of place to say here that Mr. Mahajan has recommended for sanction of the loans while working under the guidance/supervision of Mr. Kuldip Singh. As stated above, it is reiterated that it was the discretion of Mr. Kuldip Singh to sanction loans to the borrowers or otherwise irrespective of the recommendation made by Mr. Mohit Mahajan. Hence, accountability of Mr. Kuldip Singh as Branch Head while sanctioning loans/advances was definitely on the higher scale than the recommending officer Mr. Mohit Mahajan. Truly, Mr. Kuldip Singh was expected to safeguard the interest of the bank by taking judicious decision as to whether sanction/ disburse loans to the borrowers or otherwise by virtue of his experience as a banker for more than three decades at that time."

In view of the aforesaid, the Bank found that since Mr. Mohit Mahajan was only a probationary officer, new to the Bank and keeping in view the gravity of the acts or mis-conduct, he deserved to be imposed with a different/lesser penalty.

Next two contentions, of learned counsel, are interdependent. In fact, both stand answered by the Appellate Authority. In any case, this Court, in exercise of its power of judicial review, has also re-examined the matter. The Appellate Authority has recorded sound reasons for different penalties awarded to Kuldip Singh (The writ petitioner) and Mr. Mohit Mahajan. Although learned counsel, for the petitioner, made sincere efforts, however, failed to convince that the difference, in the penalty, is shockingly disproportionate. In such cases, the High Court can interfere only when there is a lacuna in the procedure of the disciplinary inquiry held or when the punishment inflicted is grossly unjust and shocking to the conscious. A reference, in this regard, can be made to the judgments, passed by the Supreme Court, in ***State of UP Vs. Jai Karan Singh (2003) 9 SCC 228, PD Aggarwal Vs. State Bank of India (2006) 8 SCC 776,*** and ***Commissioner of Police Vs. Satya Narain Kaushik, (2016) 6 SCC 303***.

Keeping in view the aforesaid facts, this Court does not find it appropriate to interfere.

Hence, the present writ petition is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the aforesaid judgment

05.01.2021 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**