

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

104

=====

IN VIRTUAL COURT

=====

**CM No. 3113-CWP of 2022 in/and
CWP No. 21456 of 2021
Date of decision : 10.3.2022**

Harinder Singh Kanwar

.....Petitioner

Vs.

Central Bank of India and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. K.K. Garg, Advocate, for the petitioner

Rajbir Sehrawat, J. (Oral)

CM No. 3113-CWP of 2022:

This is an application for placing on record true typed/photocopy of Central Bank of India (Employee's) Pension Regulations, 1995 as Annexure P-7; and for exemption from filing the certified copies of the same.

For the reasons mentioned in the application, the same is allowed. True typed/photocopy of Central Bank of India (Employee's) Pension Regulations, 1995 as Annexure P-7 is taken on record.

CWP No. 21456 of 2021:

This is a petition filed under Article 226 of the Constitution of India for quashing the order dated 12.12.2018 (Annexure P-4), passed by respondent No.3- Disciplinary Authority, whereby the petitioner has been awarded penalty of removal from service which shall not be a disqualification for future employment; under Regulation 4 of the Central Bank of India Officer

Employee (Discipline and Appeal) Regulations, 1976 (in short 'the Regulations'); and the order dated 12.9.2019 (Anneuxre P-6) passed by respondent No.2- Appellate Authority, upholding the order dated 12.12.2018. It is further prayed that the respondents be directed to consider the case of the petitioner for pension by modifying the punishment of 'removal from service' to that of 'compulsory retirement'.

The facts of this case are that the mother of the petitioner is stated to be residing in Canada. As per the assertions of the petitioner, she was facing health issues. Hence, the petitioner had applied for leave to attend to his mother, however, the respondent bank had declined the same thrice. Despite declining of the leave, the petitioner left India and started absenting from duty w.e.f. 8.2.2018. He remained absent for a long time, therefore, a charge sheet was issued to the petitioner on 17.7.2018. The petitioner did not join even the proceedings of the enquiry. Therefore, he was proceeded against ex-parte. After conducting the enquiry, the petitioner was inflicted the punishment of 'removal from service without disqualification for future employment'. The petitioner had preferred statutory appeal against the said order. However, the Appellate Authority has also dismissed the petitioner's appeal. Hence, the present petition has been filed challenging the original and appellate orders of the punishment. One thing more which is to be noted is that even the present petition has been filed by the petitioner through GPA; since the petitioner is still abroad.

Learned counsel for the petitioner has submitted that the absence of the petitioner from duty is not willful. The Enquiry Officer has not returned the finding that the absent has been willful. Hence, the punishment imposed

upon the petitioner is totally illegal. Counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court rendered in the case of **'Krushnakant B. Parmar v. Union of India and another, 2012 (3) SCC 178'**, to argue that unless the absence is willful, the same cannot be taken as a misconduct. Hence, the petitioner could not have been punished for the said absence at all, due to lack of recording a specific finding that the petitioner was willfully absent. It is further submitted that the petitioner is having the entire good service record during 21 years of long service, therefore, the punishment imposed upon the petitioner is totally disproportionate. Accordingly, it is submitted that the impugned orders deserves to be set aside and the petitioner be granted pensionary benefits.

Having heard counsel for the petitioner and having gone through the record, this Court does not find any substance in the argument raised by counsel for the petitioner. Undisputedly, the petitioner has remained absent despite denial of the leave to him, specifically, thrice. Therefore, even as per the assertions made in the petition, the petitioner had remained absent from duty without permission of the competent authority. Moreover, the petitioner was issued due charge sheet. He chose not to participate in the proceedings. Therefore, the Enquiry Officer had no option but to proceed ex-parte. The very fact that the petitioner has not returned to India till today despite passing of more than 4 years itself shows the misconduct of the petitioner. Otherwise also, the petitioner has not been able to point out any deviation from statutory rules prescribed for conducting the enquiry in the present case.

Although counsel for the petitioner has relied upon the judgment of the Supreme Court in **Krushnakant B. Parmar's case** (supra) to buttress

his argument that since the Enquiry Officer has not recorded the finding regarding 'willful absence', therefore, the absence cannot be construed as misconduct so as to punish the petitioner, however, this court does not find any substance in this argument as well. Undisputedly, the petitioner has been issued charge sheet for misconduct under Regulation 13 (1) read with Regulation 24 of the Regulations. The 'misconduct' has been defined in the said rules as under :

“Conduct Regulations:

Regulation 13 (1) - No officer employee shall absent himself from his duty or be late in attending office or leave the station without having first obtained the permission of the competent authority;

Regulation 3 (1) - Every Officer employee shall at all times take all possible steps to ensure and protect the interest of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of an officer employee.

Regulation 24. Acts of Misconduct - A breach of any of the provisions of these regulations shall be deemed to constitute a misconduct punishable under the 'Central Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976.'

A bare perusal of the above said Regulations shows that the regulations have made 'absence without permission', per se, as a punishable misconduct. The element of 'willful' with the 'absence' has not been adopted by the punishment regulations as such. Therefore, neither the petitioner was charged with remaining 'willful absent' nor any such finding was required to be recorded by the Enquiry Officer. The charge against the petitioner was qua remaining 'absent without permission', and not regarding remaining 'willful absent'. Hence, no fault can be found with the fact that the Enquiry Officer has not recorded the finding of 'willful absent' on the part of the petitioner. The charge as alleged against the petitioner has been duly established. Although

counsel for the petitioner has relied upon the judgment of the Supreme Court in **Krushnakant B. Parmar's case** (supra), however, a perusal of the judgment shows that the said judgment has no relevance with the facts of the present case and is totally distinguishable. In the case before the Supreme Court, the misconduct was defined by the concerned rules as under :-

“Rule 3 - General.

- (1) Every Government Servant shall at all times -
 - (i) Maintain absolute integrity;
 - (ii) maintain devotion to duty; and
 - (iii) do nothing which is unbecoming of a Government servant.

Hence, under the rule which was involved in the case before the Supreme Court, 'absence without permission', per se, was not a misconduct. Therefore, the question to be considered by the Supreme Court was whether absence from duty would tantamount to 'lack of maintaining devotion to the duty or not'. It is in that context that the Supreme Court had held that unless the 'willful absent' is there, it would not tantamount to 'lack of maintaining devotion to the duty.' Needless to say, that 'will' and 'devotion', both are the reflective elements of the thought process of human beings. Therefore, the element of 'willful' along with 'absence' was read by the Supreme Court and it was held that unless the absence is willful, the same would not tantamount to 'lack in maintaining devotion to the duty'. On the contrary, in the present case as mentioned above, 'absence without permission', per se, is punishable. Hence, there is no parity between the facts of the two cases.

Counsel for the petitioner has also submitted that since the petitioner had completed minimum service required to earn pension, therefore, the punishment imposed upon the petitioner should be modified so as to

convert it into a punishment of 'retirement with pensionary benefits'. Hence, in essence, the argument of counsel for the petitioner is that the punishment imposed upon the petitioner is disproportionate to the misconduct. In this regard, it deserves mention that the issue of quantum of punishment is best left to the Punishing Authority. It is settled law that the Court is not to interfere on the issue of quantum of punishment unless the punishment is so disproportionate to the misconduct as to shock the conscience of the Court. However, in the present case, this Court does not find the punishment to be of that category and, therefore, is not inclined to interfere with the same. Moreover, the petitioner has remained absent from duty for a long time even after the completion of enquiry and imposition of punishment. This altogether discounts any sympathetic consideration even qua the quantum of punishment, even if this Court intended to interfere with the same.

It is also well settled that in the disciplinary matters, the Court does not sit in appeal over the proceedings or result of the departmental enquiry. As such, the Court is not required to interfere except in case of violation of any statutory rules, allegations of bias or it being a case of no evidence at all. None of these facts is found present in the present case. Hence, there is no ground before this Court to interfere in this matter.

Hence, finding no merit in the present petition, the same is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

10.3.2022

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No