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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19241-2017 (O&M)
Date of Decision: 08.01.2024

Ram Narain

....Petitioner(s)

Versus

Jhajjar Central Cooperative Bank Ltd. and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Amit Parashar, Advocate, for the petitioner.

Mr. Amit Khatkar, Advocate, for the respondents.

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JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *Certiorari* for quashing of resolution/order dated 03.08.2017 (Annexure P-10) passed by the Board of Directors of the respondent-Bank with a further prayer to release all the retiral benefits to the petitioner as despite being retired on 31.01.2015 nothing has been released to the petitioner after his retirement.

2. The brief facts of the present case are that the petitioner was working as a Secretary/Ex-Clerk in the respondent-Bank and he was issued a charge-sheet by the Bank on various grounds vide Annexure P-1 dated 22.02.2010. There were five charges against the petitioner which have been numbered in the annexure to the charge-sheet and those were pertaining to the action of the petitioner in wrongfully and illegally opening an account of one Pradeep Singh which was a fictitious account and some transactions

have been made by the petitioner by entering into the accounts book. Some more transactions of some other persons have also been so mentioned in the charge-sheet. Vide Annexure P-2, the petitioner replied to the charge-sheet on 15.03.2010 and he replied to all the five charges levelled against him. Thereafter, vide Annexure P-3, the Managing Director of the respondent-Bank appointed an Enquiry Officer to enquire into the charges in accordance with the Haryana State Central Co-operative Bank's Staff Service (Common Cadre) Rules, 1975 (hereinafter called as 'Staff Service Rules, 1975'). Thereafter, vide Annexure P-5 dated 18.01.2012, the Enquiry Officer submitted an enquiry report to the Managing Director of the Bank. In the short enquiry report, it has been so stated against each and every charge that the charge stands proved against the petitioner on the basis of his admission. Thereafter, on 30.05.2012 vide Annexure P-6, a show-cause notice was issued under Rule 27.3 (VI) of the Staff Service Rules, 1975 to show cause as to why he should be not dismissed from service. Thereafter, vide Annexure P-7, the petitioner filed a reply to the aforesaid show-cause notice on 13.06.2012. In the reply, he took various pleas including the plea that the Enquiry Officer has not followed the proper procedure while recording the statements and he has bypassed all the norms and statues and was not even given any opportunity to cross-examine the witnesses produced by the Bank nor he was allowed to inspect the relevant record. He also stated in the reply pertaining to his role as to how he was never instrumental in any such kind of fraud but rather it was the Manager of the Bank who was instrumental in the aforesaid irregularity, if any. Thereafter, on 18.12.2012 another notice (Annexure P-8) was issued to the petitioner and this notice was in the nature of surcharge proceedings under Section 101 of the

Haryana Cooperative Societies Act, 1984 (hereinafter called as 'the Act of 1984') asking him to make a payment of Rs. 7,30,000/- alongwith interest @ 16%. The petitioner replied to the aforesaid surcharge notice vide Annexure P-9 and prayed for dropping of the aforesaid proceedings.

3. On the aforesaid surcharge notice admittedly no further action was taken by the Bank against the petitioner till date and therefore, no further course of action is required to be adopted in this regard since both the learned counsel for the parties have submitted that no action was taken on the surcharge notice. So far as the show-cause notice issued to the petitioner after the Enquiry Officer had submitted his report is concerned to which the petitioner had replied, again no action was taken by the Bank on the enquiry report whereby on the basis of enquiry report there was a proposal for dismissal of the petitioner from service vide show-cause notice issued to him to which he had replied. In this way, the disciplinary proceedings initiated under Rule 27 of the Staff Service Rules, 1975 were not brought to any logical conclusion since no order of punishment under Rules 27 and 28 of the Staff Service Rules, 1975 was passed. Even till date as per the learned counsel for the parties, no such order has been passed under Rules 27 and 28 of the Staff Service Rules, 1975.

4. In the meantime on 31.01.2015, the petitioner retired on attaining the age of superannuation. However, suddenly vide Annexure P-10 dated 03.08.2017 i.e. after a lapse of about 2½ years, a resolution was passed by the Board of Directors of the Bank whereby it was decided that since the petitioner has retired, as per Rule 32 of the Staff Service Rules, 1975, the embezzled amount be adjusted towards his retirement amount. However, no amount has been so mentioned in the aforesaid resolution Annexure P-10.

This resolution was passed by invoking Rule 32 of the Staff Service Rules, 1975.

5. The petitoner filed the present petition in the year 2017 and on 28.08.2017 notice of motion was issued by a Co-ordinate Bench of this Court and it was also directed that in the meanwhile operation of the impugned order dated 03.08.2017 is stayed.

6. Learned counsel appearing on behalf of the petitioner has argued at the first instance that after the operation of the impugned order was stayed by this Court in the year 2017, till date no retiral benefits at all have been given to the petitioner at all. He submitted that once the operation of the order itself was stayed, then it was incumbent upon the respondent-Bank to have immediately paid the retiral benefits to the petitioner which was not done by the Bank. He submitted that it is a case where the impugned order dated 03.08.2017 (Annexure P-10) has been passed without authority of law and it was an abuse of the process of law. To substantiate his arguments, he submitted that Chapter IV of Staff Service Rules, 1975 provides for the procedure to be adopted for imposing major and minor punishments. Gross misconduct and minor misconduct have also been defined under Rule 27.1. Rule 27.3 provides for penalties for gross misconduct and Rule 27.4 provides for penalties for minor misconduct. He submitted that as per the allegations against the petitioner, he was instrumental in making false enteries pertaining to the opening of the accounts and some other related allegations but no order of punishment either of gross misconduct or of minor misconduct has been passed against the petitioner under Rule 27.3 or 27.4 of the Staff Service Rules, 1975 till date and rather after the reply submitted by the petitioner to the show-cause

notice proposing dismissal, the Bank remained silent and did not pass any order under the aforesaid Rule 27 till date and therefore, the reply which was given by the petitioner to the second show-cause notice was deemed to have been accepted by the Bank. He submitted that once no order of penalty as envisaged under the aforesaid Rule has been passed and the petitioner having retired from service on 31.01.2015 wherein the master-servant relationship ceased to operate, the Bank adopted a new method after 2½ years by invoking Rule 32 of the Staff Service Rules, 1975 which deals with the deductions which the Bank has an authority to make. He submitted that since there was no order of any ascertainment or assessment of any amount qua the petitioner by passing of any order by the Bank, the aforesaid Rule 32 could not have been invoked by the Bank, even if it falls under any of the clauses of the aforesaid Rule 32. He submitted that Rule 32 can be invoked only when there is an assessment of any amount by the competent authority which has not been done in the present case and therefore, it is an abuse of the process of law to have invoked Rule 32 of the Staff Service Rules, 1975 with a direction to make a recovery from the petitioner. He also submitted that a perusal of the impugned Annexure P-10 wherein Rule 32 was invoked by the Bank after the retirement of the petitioner would show that even the aforesaid resolution itself does not speak of any amount but only speaks of interest part and therefore, till date no amount qua the petitioner has been assessed. He submitted that in this way impugned Annexure P-10 is liable to be set aside being without the authority of law.

7. Learned counsel further submitted that even otherwise also if Rule 32 is to be read alongwith Rule 27 assumingly for the sake of arguments, even then the enquiry report (Annexure P-5) itself is liable to be

set aside by this Court on the ground that it is based upon the recording made by the Enquiry Officer that the petitioner has admitted all the five charges and therefore, the charges are proved against him, whereas the aforesaid position is factually incorrect. He referred to the reply Annexure P-2 filed by the petitioner to the first show-cause notice issued to him prior to the appointment of an Enquiry Officer in which he categorically explained his role as to even if he has made the entries in the accounts but he explained his role in detail and it was not a case of an admission of any liability or his alleged role and therefore purely on the basis of admission the Enquiry Officer could not have observed that the charges have been proved and it was rather the duty of the Enquiry Officer to have considered the role of the petitioner in the light of the reply which was filed by the petitioner to the first show-cause notice and therefore *ex facie* the enquiry report also itself is liable to be set aside on this ground.

8. On the other hand, Mr. Amit Khatkar, learned counsel appearing on behalf of the Bank submitted that so far as the factual position that no final order was passed under Rules 27 and 28 of the Staff Service Rules, 1975 is concerned, the same is correct and till date no such order of minor or major punishment has been passed against the petitioner under Rule 27. However Rule 32 was invoked later on after the retirement of the petitioner but it has to be read in continuation of Rules 27 and 28 of the Staff Service Rules, 1975 and therefore, on this ground itself, the Bank was within its power to have invoked Rule 32. He also submitted that so far as the notice issued under Section 101 of the Act of 1984 for surcharge is concerned, after the reply was given by the petitioner to the aforesaid surcharge notice, no further action was taken by the Bank and no order was

passed on the notice under Section 101 of the Act of 1984. He submitted that the Bank was within its powers to have invoked Rule 32 once the Enquiry Officer has so observed that the charges against the petitioner stand proved on all counts and since it was a case of financial liability to which the petitioner has embezzled the amount alongwith the other persons including the Manager of the Bank, the petitioner is liable to pay the aforesaid amount. He also submitted that separate disciplinary proceedings were initiated against the other officials including the Manager who was also dismissed from service but later on he paid back the share of his amount and he was reinstated and in the similar fashion the petitioner is also liable to pay the amount which is due qua him i.e. Rs. 7,30,000/-. He submitted that so far as the assessment of the amount is concerned, the same was done at the time when surcharge notice was given to the petitioner.

9. I have heard the learned counsel for the parties.

10. There are some admitted facts which are to be considered first. The petitioner was issued charge-sheet and as per the enquiry report, the charges were proved against him on the basis of his admission. Thereupon a second show-cause notice was issued to him as to why he should not be dismissed from service. He replied to the second show-cause notice but no order was passed pertaining to penalty under Rules 27 and 28 of the Staff Service Rules, 1975 till date. The petitioner was issued a notice under Section 101 of the Act of 1984 for surcharge to which the petitioner replied and thereupon no order was passed on the aforesaid notice. Annexure P-10 has been passed by invoking Rule 32 and not Rules 27 and 28. Therefore, the impugned order is not an order of punishment contemplated under Rule 27.3 or 27.4.

11. Rules 27.1, 27.2, 27.3, 27.4 and 32 are reproduced as under:-

*"**27.1.** The following types of acts of omission and commission shall form the gross/minor misconduct for punishment to the employees:*

Gross Misconduct : The expression "gross misconduct" shall include any or all of the following acts of commission and omissions on the part of an employee.

(a) Dishonesty, fraud, misappropriation, embezzlement or misapplication of funds of the Bank or any of its constituents or committing any offence under Indian Penal Code in relation to the Bank and its constituents.

(b) Engaging in any trade or business outside the scope of his duties except with the permission of the Bank.

(c) Unauthorised disclosures of infromation regarding the affairs of the Bank to any of its customers or any other person concerned with the business of the Bank which is confidential or the disclosure of which is likely to be prejudicial to the interests of the Bank.

(d) Drunkenness or riotous or disorderly or indecent behaviour.

(e) Wilful damage or attempt to cause damage to the property of the Bank or any of its customers.

(f) Advertising the achievements of any Union, Association etc. of the employees recognised or otherwise, within the Bank permises without the prior permission of the Management in writing or the posting or pasting of any pamphlets, hand-bills, calenders etc. highlighting the activities, achievements etc. of the Union, except in accordance with the provisions of any Rule or Law for the time being in force.

(g) Wilfull insubordination or disobedience of any lawful and reasonable order of a superior or misbehaviour with any employee of Bank.

(h) Habitual doing of any act which amount to "minor misconduct" as defined below;

Habitual means a course of action taken or persisted at least or three previous occasions and censure or warning have been administered or adverse remarks has been administered or an adverse remark has been entered against him.

(i) Wilfull slowing down in performance of work.

(j) Gambling or betting in the premises of the Bank.

(k) Doing any act prejudicial to the interest of the Bank or negligence involving or likely to involve the Bank in loss exceeding Rs. 100/-.

(l) Giving or taking a bribe or illegal gratification form a customer or any employee of the Bank.

(m) Taking part or otherwise interfering or using his influence in any election to the Board, any Committee or sub-committee or the Directors.

(n) Punishment from a Court of Law for any offence involving moral turpitude.

(o) Absence without leave or overstaying sanctioned leave without sufficient ground for more than 8 days.

(p) Neglect of work, negligence in performing duties or habitual neligence.

(q) Breach of any rule of business of the Bank or Institutions for the running of any Department.

(r) Holding or attemping to hold or attending any meeting on the premises of the Bank, without the permission of the manangement.

(s) Seeking election to a Committee of the Bank/or affiliated societies except for a society exclusively for the benefits of the employees.

27. 2. Minor Misconduct:-

The expression "minor misconduct" shall include any of the following acts of commission or omissions on the part of any employee:-

(a) Unpuntual or irregular attendance.

(b) Committing nuisance in the premises of the Bank.

(c) Entering or leaving the premises of the Bank, except by entrace provided for purpose.

(d) Attempt to collect or collecting money within the premises of the Bank without the previous permission of the Management or except as allowed by any Rule or Law for the time being in force.

(e) Convassing for Union Membership or collection of Union

dues or subscriptions within the premises of the Bank without the previous permission of the Management or except in accordance with the provisions of any Rule or Law for the time being in force.

(f) Marked disregard or ordinary requirements of decency and cleanliness in person or dress.

27.3 Penalities for Gross misconduct:

An employee found guilty of gross misconduct may be awarded any one or more of the following punishments apart from the recovery of actual loss or damage caused by him to the Bank.

(i) Censure

(ii) With-holding of annual increments.

(iii) Barring of promotion to the higher grade post for a specific period.

(iv) Reversion to a lower grade post.

(v) Suspension.

(vi) Dismissal.

(vii) Fine not exceeding the total monthly emoluments of the employee.

27.4 Penalties for minor misconduct:

An employee found guilty of misconduct may be awarded any of the following punishments according to the gravity of his misconduct.

(a) Warning or censure, with-holding of annual increments for a period of not longer than six months.

(b) Fine (where a fine is imposed it shall not exceed 1/32 of the monthly emoluments of the employee).

***32 Deductions:-** The Bank shall have the authroity to make the following deductions from amounts payable to an employee:*

(a) Fines.

(b) Deductions on account of unauthorised absence from duty.

(c) For damages to or loss of goods entrusted to the employee where such loss or damage is due to his/her wilful negligence. Such deductions shall not exceed the amount of damages or loss and shall not be made till the employee is given a reasonable opportunity of explanation.

(d) Shortage or loss of money which the employee is required to account for or any other money payable to Bank by the

employee.

(e) *Recovery of advances or over-payment of bills and other charges.*

(f) *Provident Fund contribution.*

(g) *Amount due in lieu of notices.*

(h) *Other dues under the Punjab Coop-Societies Act, and Rules. Deduction shall be entered in the roll and separate receipts shall be issued.*

(i) *Any other deductions for which he may have authorised the Bank in writing or which the Bank may be legally entitled to make.*

12. While dealing with the first argument raised by the learned counsel for the petitioner that once disciplinary proceedings were initiated against the petitioner and even after the enquiry report, a show-cause notice was issued to him, still no order of punishment has been passed under Rule 27 and the provision of Rule 32 could not have been invoked later on is concerned, a perusal of the aforesaid Rule would show that detailed procedure for imposition of major and minor penalties has been provided under Rules 27.1, 27.2, 27.3, 27.4 and 28 of the Staff Service Rules, 1975. Major penalties in the nature of gross misconduct and minor misconduct have been defined under Rules 27.3 and 27.4 respectively. Vide impugned order (Annexure P-10) it was so decided by the Bank to adjust the amount embezzled by the petitioner towards his retirement dues which is not covered in any of the aforesaid provisions either of Rule 27.3 or 27.4. Even otherwise also as per the learned counsel for the respondent-Bank no order has been passed under Rule 27.3 or 27.4 till date. Therefore, this Court would delve into the issue as to whether after 2½ years of retirement, Rule 32 could have been invoked by the Bank or not. A perusal of the aforesaid

reproduced Rule 32 would show that at the most sub-rule (d) could have been pressed into service. Even assumingly that clause (d) of Rule 32 is to be pressed into service it provides that for the shortage or loss of money which the employee is required to account for or any other money payable to Bank by the employee, the same can be deducted. However a perusal of the Annexure P-10 would show that no such amount has been mentioned at all, although interest @ 12 % has been mentioned and therefore, it is not understood as to qua which amount such deduction is to be made. It was the argument of the learned counsel for the Bank that the aforesaid amount was assessed when notice under Section 101 of the Act of 1984 was issued to the petitioner to which he replied and assessment of an amount of Rs. 7,30,000/- was made and therefore, it would mean that the aforesaid amount was due from the petitioner. However, the argument raised by the learned counsel for the Bank is not sustainable and cannot be accepted particularly in view of the fact that it is an admitted position that on the aforesaid show-cause notice being issued under Section 101 of the Act of 1984 admittedly no action was taken against the petitioner at all and therefore it was deemed to have been dropped and now the Bank cannot turn around and say that the assessment was made while initiating the proceedings under Section 101 of the Act of 1984 and deducting the aforesaid amount by invoking Rule 32 of the Staff Service Rules. Such kind of explanation cannot be accepted by this Court. Even otherwise also the impugned order Annexure P-10 is totally silent with regard to any assessed amount and therefore no recovery could have been effected or adjusted in vacuum. Apart from the above, once the Bank initiated enquiry, appointed an Enquiry Officer and second show-cause notice for dismissal was issued to the petitioner to which he replied, the Bank did not choose to put the enquiry to a logical end but permitted the petitioner to retire on 31.01.2015 and it was after 2½ years that Rule 32 was invoked which would therefore be totally unsustainable in the eyes of law and it would amount to circumventing the provisions of Rules 27 and 28.

13. When the petitioner was initially served with charge-sheet vide Annexure P-1, he replied to the charges vide Annexure P-2. However, a perusal of the enquiry report which is a very short report would show that the Enquiry Officer has only stated that since the petitioner has admitted the charges, the same stand proved. For consideration of the aforesaid observations which have been made by the Enquiry Officer it will be necessary to compare the findings of the Enquiry Officer qua all the five charges and that of the reply which was submitted by the petitioner vide Annexure P-2. Comparison can be made by way of a tabulated form as under:-

Charges	Reply to the charges
1. A grave omission has been caused by opening a Saving Bank Account No.3703 on the basis of forged identify card and PAN number in the name of Sh. Pradeep Singh son of Sh. Khachedu Singh, resident of House No.14, Sector 7, Bahadurgarh by preparing a Voucher No.6450 with respect to deposit of an amount of Rs.1,40,000/- on 10.12.2009.	1. Sh. Pradeep Singh deposited Rs.1,40,000/- in his account on 10.12.2009 and after deposit the slip comes to the clerk. After deposit the slip came to me and I made the entry in the account and annexed in the account after signing it. Therefore I have done no grave omission by signing the slip.

2. From the above mentioned account number 3703 vide Voucher No.6761 dated 21.12.2009 an amount of Rs. 6,20,000/- was transferred to the Account No.1304 of the Branch of Khanpur Khurd by the signatures of Sh. Ram Narain Secretary/Clerk, a grave omission has been gone.	2. Pradeep Singh came on 21.12.2009 and sat with Manager Sh. Hari Parkash. While Manager Hari Parkash prepared a voucher and gave to me and at the back of voucher and wrote an application for debit from Account No.3703 to Account No.1304 of Khanpur Khurd and got it signed by Pardeep Singh. In this way I have not done any serious omission my making an entry in the account.
3. On the basis of forged advice, by making the entry of credit of Rs. 1,47,000/- in Account No.3703 vide Voucher No.7094 dated 05.01.2010, Sh. Ram Narain Secretary/Clerk has done a serious omission.	3. On 05.01.2010 Branch Manager Sh. Hari Parkash gave me an advice of Rs. 14,70,000/- and asked me to prepare the voucher and before preparing the voucher I showed the words on the advice C/A SB A/c 3703 Sh. Pardeep Singh to Manager Sh. Hari Parkash and inquired. After perusing Hari Parkash Manager said that the advice has come from the HO and it correct and further told me to credit the account of Pardeep Singh and debit the HO and asked me to prepare the voucher. In this way I prepared this voucher and made an entry in the account and annexed the voucher in the account and handed over to the Hari Parkash Manager. In this way I have not committed any serious omission by making an entry of credit.

4. On 07.01.2010 through Cheque No.488341 of Account No.3703 a payment of Rs. 1,25,000/- has been made in the name of Sh. Som Vir Singh in which by making the entry in the account Sh. Ram Narain Secretary/Clerk has done a grave omission. No effort was made to identify Sh. Som Vir Singh is a serious lapse.	4. On 07.01.2010 Som Vir Singh came to the bank and sat with Manager Hari Parkash and after that gave me a cheque no.488341 of Rs. 12,50,000/- and after giving me the cheque I made the entry of cheque in the account and annexed in the account and gave to the Manager Hari Parkash. I did not ask about the identity of Som Vir because he was sitting with the Manager Hari Parkash. In this way I have not gone any serious omission.
5. On dated 11.01.2010 through Cheque No.488345 of Account No.3703 a payment of Rs. 50,000/- has been made in the name of Sh. Anil Kumar in which by making the entry in the account Sh. Ram Narain Secretary/ Clerk has done a grave omission. No effort was made to identify Sh. Som Vir Singh is a serious lapse.	5. On 11.01.2010 Anil Kumar came to the Bank and sat with Manager Hari Parkash and after that gave me the cheque no.488345 of Rs. 50,000/- and the after giving me the cheque I made the entry of cheque in the account and after annexing it in the account gave to the Manager Hari Parkash. I did not ask about the identity of Anil Kumar because he was sitting with the Manager Hari Parkash. In this way I have not done any serious omission.

14. A perusal of the aforesaid comparison would show that it is not a case on the face of it that the petitioner has admitted the charges. However on every point the petitioner has given his explanation that although entry was made by him but how and under what circumstances the same was done and what was his duty to do and has explained in detail. By no stretch of imagination the aforesaid explanation given by the petitioner can be said to be

an admission of any charge against him. Therefore on this ground as well the enquiry report itself cannot sustain and has to be set aside, even although no final order of punishment was passed in pursuance of the aforesaid enquiry report but the learned counsel for the respondent-Bank has argued that Rule 32 was invoked in continuation of Rule 27 and therefore it became necessary to consider the observations of the Enquiry Officer in the report. In other words, when enquiry proceedings were initiated against the petitioner under Rule 27, the same were never put to a logical end and no punishment order was passed against him but the learned counsel for the respondent-Bank has repeatedly argued that Rule 32 was in continuation of Rule 27 and therefore it became necessary to consider the legality of the aforesaid enquiry report which according to this Court is liable to be set aside on the aforesaid ground.

15. In view of the aforesaid facts and circumstances, the present petition is allowed. The impunged order dated 03.08.2017 (Annexure P-10) as well as the enquiry report dated 18.01.2012 (Annexure P-5) are hereby set aside and quashed. The respondent-Bank is directed to pay all the retiral benefits to the petitioner from the date of his retirement alongwith interest @ 6 % per annum which shall be paid to him within a period of four months from today.

08.01.2024 **(JASGURPREET SINGH PURI)**
rakesh **JUDGE**

Whether speaking : Yes/No
Whether reportable : Yes/No