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Ajit Kumar Saraswat Vs. Small Industries Development Bank of India and Anr.

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Court : Delhi

Decided On : May-07-2015

Judge : Valmiki J. Mehta

Appellant : Ajit Kumar Saraswat

Respondent : Small Industries Development Bank of India and Anr.

Advocate for Def. : Mr. Dinesh Agnani

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) No.5208/2008 7th May, 2015 AJIT KUMAR SARASWAT Through: ..... Petitioner Petitioner in person. versus SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA & ANR. ..... Respondents Through: Mr. Dinesh Agnani, Sr. Adv. with Mr.Ankit jain, Adv. for R-1. CORAM: HON'BLE MR. JUSTICE VALMIKI J.

MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. By this writ petition filed under Article 226 of the Constitution of India, petitioner, who was an employee of the respondent no.1/Small Industries Development Bank of India, impugns the orders passed by the departmental authorities; Disciplinary Authority dated 24.5.2005 and the Appellate Authority vide order dated 08.8.2007; imposing the punishment upon the petitioner of reduction

in one rank from General Manager to Deputy General Manager and reduction in pay to the maximum applicable in Deputy General Manager scale for a period of two years, and after two years, the petitioner was to be restored to the rank of General Manager at the pay scale he was drawing prior to the date of penalty. Against the petitioner, there were charges of negligence and misconduct in operation of three accounts of three customers being Mideast [India]. Limited, Mesco Pharmaceuticals Limited and Asian Consolidated Industries Limited. There were a total of 17 articles of charges against the petitioner including the aspect of allowing withdrawals beyond the sanctioned limits, not getting fulfilled the terms under which sanction was given and allowing discounting of bills by unauthorised persons.

2. The petitioner disputed the article of charges, and therefore an Enquiry Officer was appointed. In the departmental proceedings the petitioner participated. Both the parties led their evidence. Enquiry Officer thereafter gave his report dated 27.1.2004 holding that out of 17 articles of charges, 14 articles of charges were completely proved and 3 articles of charges, being article of charges nos. 2, 13 & 15 were partially proved. The report of the Enquiry Officer is a detailed report, which as per the paper book of this Court runs from pages 157 to 263. The Enquiry Officer has examined all the contentions, documents, evidence and arguments of the parties, and thereafter has given the detailed findings and arrived at the conclusions for holding the petitioner guilty.

3. Before I turn to the arguments urged on behalf of the petitioner, at this stage, it is relevant to note that this Court while exercising the jurisdiction under Article 226 of the Constitution of India, does not sit as an appellate court to re-apprise the findings of facts and conclusions arrived at by the departmental authority. Once the departmental authority takes one possible and plausible view, this Court will not substitute its view for that of the departmental authorities. This Court can only interfere with the findings and conclusions of the departmental authorities if the conclusions are perverse or are against the law/rule of the employer organization or violative of the principles of natural justice or if the punishment imposed is highly disproportionate. Also, at this stage, I may note that certain directions were issued by this Court on 14.2.2013, whereby this Court requested the competent

authority in the respondent no.1/Bank to, if possible, look into the issue of penalty afresh, and pursuant to this order, the case of the petitioner was once again placed before the board of directors of the respondent no.1/Bank and the board of directors have reiterated the punishment which has been imposed upon the petitioner by observing that petitioner has indeed been guilty of infractions, especially of allowing withdrawals in the accounts beyond the sanctioned limit. This decision of the board of the directors is Extracts of Minutes of Hundred-sixty third meeting of Board of Directors held at 12:30 p.m. on May 13, 2013 at Mumbai 25. Confidential Writ Petition No.5208 of 2008, filed by Shri AjitKumar Saraswat, Ex-GM before the Honble Delhi High Court - Compliance of the Order dated February 14, 2013, passed by the Honble High Court The Board was informed that Shri Ajit Kumar Saraswat, an ex-Officer, has filed a Writ Petition No.5208 of 2008 before the Honble Delhi High Court, against the Penalty imposed on him by the Bank, and the matters related thereto. The Board was further informed that the Honble High Court has directed in terms of the Order dated February 14, 2013, that the entire matter be placed before the Management of SIDBI, who can take a relook into the aspect of Penalty Orders, considering the lapse of time and facts of the case. Accordingly, the Board considered the entire material on record, placed before it in terms of the Memorandum SIDBI B No.20/2013-14 dated May 13, 2013, including the Orders dated August 19, 2004 and May 18, 2005, the advice given by the Central Vigilance Commission in terms of the letter dated Februrary 15/April 12, 2005, and the Order dated February 14, 2013 passed by the Honble Delhi High Court. The Board observed t hat 17 allegations / charges had been levelled against Shri Ajit Kumar Saraswat, out of which 14 were found to be proved, and 3 partly proved during the Departmental Inquiry. The said allegations / charges were primarily pertaining to the negligence on the part of Shri Ajit Kumar Saraswat in having allowed discounting of bills in three large accounts, i.e. Mideast (India) Limited, Mesco Pharmaceuticals Ltd. and Asian Consolidated Industries Ltd. without the approval of the Delegated Authority, and/or without compliance of the stipulated terms, and/or without creating the stipulated security, and certain other irregularities related thereto. The Board further observed that even after having generally concurred with the findings of the Inquiry Officer, Shri V.K. Chopra, the then Chairman & Managing Director and Competent Authority

had proposed the punishment of Reduction of three increments in the time scale of pay, for a period of two years, against Shri Ajit Kumar Saraswat, with certain directions incidental thereto. Subsequently, at the time of passing the final order, Shri N. Balasubramanian, the then Chairman and Managing Director and the Competent Authority, who had succeeded Shri V.K. Chopra, went through the relevant papers, evidences on record, written submissions, report of the Inquiry Officer and the Representation of Shri Ajit Kumar Saraswat on the findings of the Inquiry Officer, while taking a decision to impose the punishment on Shri Ajit Kumar Saraswat and imposed the punishment of Reduction in one Rank (General Manager to Deputy General Manager) and reduction in pay to the maximum applicable in Deputy General Manager scale. After having a detailed relook into the matter, as directed b y the Honble High Court, the Board noted that the Order dated August 19, 2004 was only a proposal, which had not attained finality, as evident from page 16 of the Order, in which the Competent Authority had merely proposed a punishment in respect of Shri A.K. Saraswat, Board also considered the CVC guidelines for second stage advice in vigilance matters and noted that bank was required to sent the proposal for second stage advice to the Commission. The Board further noted that the Order dated May 18, 2005 was the final Penalty Order, which was passed by Shri N. Balasubramanian, the then Chairman and Managing Director and Competent Authority. The Board also noted that the final Penalty Order dated May 18, 2005 was a reasoned order, in as much as the Competent Authority had not only stated in clear terms that he concurred with the findings of his predecessor, but he also gave a justified reason for holding one of the articles of charge as Not proved. Thus, the Board did not find any infirmity in the final Penalty Order dated May 18, 2005, in terms of which the penalty of Reduction in one rank (General Manager to Deputy General Manager) and reduction in pay to the maximum applicable in Deputy General Manager scale was imposed on Shri A.K. Saraswat. The Board also noted that pursuant to the Appeal dated August 05, 2005, preferred by Shri A.K. Saraswat, the then Board of Directors considered the same Order dated May 18, 2005 as the final Order, and modified it by specifying a period of two years therein. After having re-looked into the matter, de novo, the Board also felt that the Allegations/Charges found to be proved against Shri A.K. Saraswat were serious in nature, involving a substantial

amount of Banks funds. Taking into account the gravity of the said Allegations/Charges, the Board was of the considered view that the punishment imposed on Shri A.K. Saraswat, in terms of the Order dated May 18, 2005, and modified in appeal vide resolution dated March 23, 2007 was just & proper and does not require any modification. Accordingly, considering the facts of the case, and after detailed deliberations, the Board RESOLVED that the Order dated May 18, 2005, passed by the then Chairman & Managing Director and Competent Authority, and modified in appeal vide Board Resolution dated March 23, 2007, be and is hereby confirmed, for the reasons stated hereinabove.

4. It is also relevant to note that the punishment imposed upon the petitioner is not the extreme punishment of removal from service, and since the petitioner was found guilty of wrongly allowing the withdrawals in the accounts, he was imposed the punishment of reduction of rank, and that too only for two years. The Disciplinary Authoritys stricter punishment was reduced by the Appellate Authority. Be it noted that along with the petitioner, his next higher officer being Mr. M.H. Jhurani was also proceeded against departmentally, and Mr. M.H. Jhurani has been inflicted the punishment of reduction of rank from Chief General Manager to General Manager. Therefore, both the petitioner and Mr. M.H. Jhurani who were jointly responsible for recommending and approval of allowing withdrawals in the accounts beyond the sanctioned limit have been imposed similar punishment by the departmental authorities.

5. Now, I will deal with each of the arguments which have been urged before this Court by the petitioner.

6. The first argument urged on behalf of the petitioner is that the charge- sheet which was first issued in this case was modified, and the petitioner was not given an option to reply to the amended charge-sheet, and therefore the departmental proceedings against the petitioner are liable to be quashed. This argument urged on behalf of the petitioner on a literal reading sounded to be very serious, however, the argument is really a case of making a mountain of a molehill because the only amendment in the charge-sheet is that in the original charge-sheet the relevant regulations of the respondent no.1/Bank, as per which

misconduct was found against the petitioner, were not stated and the amended charge-sheet only gave the relevant regulation numbers of the respondent no.1/Bank which were violated on account of facts which were already stated in the earlier charge-sheet. In my opinion, merely adding one line at the end of each charge stating the specific regulation of the respondent no.1/Bank as a result of which misconduct is alleged against the petitioner will not amount to changing of the charge-sheet for the petitioner to have been prejudiced by petitioner alleging that he was not allowed to give any reply to the amended charge-sheet. A conclusion given being the violation of a particular relevant regulation, even if it was not stated in the original charge-sheet, would not have been such a defect in the original charge-sheet to invalidate the same because what is the regulation which is violated is a conclusion which emerges from existence of facts stated in the charge-sheet and the facts of misconduct are in issue and not which is the regulation number. Therefore there is only technicality in the first argument of the petitioner with respect to the so-called illegality in amending of the charge-sheet. In my opinion, therefore there is no merit in the first argument that the petitioner has been prejudiced because the original charge-sheet has been amended. The first argument urged on behalf of the petitioner is therefore rejected.

7. The second argument which is urged on behalf of the petitioner has two parts. This argument relates to the time lag between the defaults which are stated of the years 1993-1995 and issuing of the charge-sheet. The defaults alleged against the petitioner are actually of the years 1993-1995 and the charge-sheet in this case is dated 07.1.2002. It is argued that delay in issuing of the charge-sheet vitiates the entire departmental proceedings, and in fact, it is also argued that the issuing of the charge-sheet is time barred.

8. So far as the question of the charge-sheet being time barred is concerned, no regulation or any provision of law was pointed out with respect to a limitation period for a charge-sheet, and this is obviously because there is no limitation period provided in law for issuing of the charge-sheet. The only issue in law and facts which arise in each case of departmental proceedings is that if the charge-sheet is delayed, a charged employee can allege that because of the delay, prejudice is caused to him on certain counts, and if that prejudice is substantiated

and established before the court, a court can depending upon the facts of a particular case, look into this aspect for quashing of the departmental proceedings which would have seriously prejudiced a charged official in his defence. In this regard, it is relevant to note that the petitioner also argues that once the books of accounts of the respondent no.1/Bank with respect to the three accounts were audited, and no discrepancies were found by the audit team, there was no ground for the respondent no.1/Bank in the year 2002 to allege that, in fact, there were deficiencies in the accounts in the relevant years 1993-1995.

9. The argument urged on behalf of the petitioner of delay in issuing of the charge-sheet for quashing of the same has no merits on account of various reasons. The first reason is that no prejudice has been shown or to have been established against the petitioner that the petitioner has in any manner been prejudiced in his defence because certain particular documents which established the innocence of the petitioner have been lost. No such documents or their nature etc etc have been pointed out to this Court during the hearing by the petitioner to show that such documents have been lost on account of delay and such documents if filed, would have exonerated the petitioner. Once there is no question of prejudice, delay in issuing of the charge-sheet would not go in favour of the petitioner for quashing of the departmental proceedings. The second reason to reject the argument of delayed charge-sheet is that, no doubt, audit does take place of the books of the accounts of the respondent no.1/Bank, but audit is done of thousands and thousands of documents by taking documents on sample basis. Each and every document of the employees is not necessarily scrutinized, and therefore, it is very much possible that certain infractions would have skipped the notice of the audit team, and merely because the audit team did not find the infractions which were subsequently discovered during the years 1998-1999 with respect to the relevant period 1993-1995 cannot mean that the petitioner on this count should be exonerated and departmental proceedings be quashed. There is no law that if an audit team does not find any infractions, but these infractions are discovered subsequently, it will entitle the charged official to claim that he should be exonerated on this count. This argument of the petitioner, therefore has no substance and is accordingly rejected.

10. The third argument which was urged by the petitioner was that the departmental authorities have wrongly acted against the petitioner on the basis of such Central Vigilance Commission (CVC) advice. It is argued that there is no provision in the CVC regulations that CVC advice has to be sought with respect to disciplinary proceedings, and it is only the disciplinary authority which has to apply its mind to the enquiry report for determining the punishment to be imposed. It is argued that consultation with CVC, more so at the back of the petitioner, is wholly illegal including for the reason that the Disciplinary Authority in this case originally had proposed an order dated 19.8.2004 imposing only the punishment of reduction in three increments for two years, but thereafter instead of this order dated 19.8.2004, the petitioner was served with the order dated 18.5.2005 of the Disciplinary Authority (a different officer than the officer who had proposed the order dated 19.8.2004), and thereby imposing the penalty upon the petitioner of reduction of one rank from General Manager to Deputy General Manager. Of course, I note that the Appellate Authority reduced this punishment that the reduction in rank will not be permanent but will only be for a period of two years.

11. No doubt, the exercise conducted by the departmental authorities of corresponding with CVC with respect to the punishment to be imposed upon the petitioner is unusual, inasmuch as, ordinarily it is the departmental authority/disciplinary authority which must only and only apply its mind to the enquiry report and decide the punishment. It is not open to the disciplinary authority to formally consult another authority or person, inasmuch as, decision has to be very much of the disciplinary authority and not any other person. Even if the regulations of the respondent no.1/Bank do provide for referring of matter to CVC, I do not think those regulations can be legal because those regulations will hit at the very principle that it is only the disciplinary authority which has to apply its mind and decide with respect to acceptance and rejection of the enquiry report and also with respect to the aspect that what should be the punishment which should be imposed upon the charged official. Be that as it may, I note that CVC is not a private person or a private body. CVC is a statutory body, specifically empowered to look into corruption in government organizations and public bodies. Therefore, no doubt, consultation legally may not take place between the departmental authority and the CVC, however, I cannot attribute such illegality or

malafides in these actions for the disciplinary proceedings to be quashed, and this is more so because the first order dated 19.8.2004 was only a proposal and the same was never communicated to the petitioner. Once an order is not communicated to the petitioner, no rights or liabilities arise thereunder as against the petitioner/charged official. An order unless it is communicated has no effect, and this proposition has been laid down by the Constitution Bench of the Supreme Court way back in its judgment in the case of Bachhittar Singh Vs. The State of Punjab AIR 1963 SC395 The petitioner was only served with the punishment imposed in terms of the order dated 18.5.2005, and therefore, both the rights and liabilities arise only in terms of the order dated 18.5.2005 of the Disciplinary Authority and not an earlier un-communicated order of the Disciplinary Authority dated 19.8.2004. It is also further required to be noted that the petitioner may have had a case if the order of the Disciplinary Authority dated 18.5.2005 talked of acting on the CVC advice i.e of the Disciplinary Authority having acted on the CVC advice, but the order of the Disciplinary Authority dated 18.5.2005 does not in any manner reflect that the Disciplinary Authority has necessarily and only acted pursuant to the advice of the CVC or that the order has been passed which in any manner is recorded as being influenced by the advice of CVC. Consultation, therefore, by the disciplinary authority with a statutory body being the CVC, in my opinion is not such grossly arbitrary/illegal action for this Court to allow the petitioner to succeed in his argument for quashing of the disciplinary proceedings. This argument urged on behalf of the petitioner is therefore rejected.

12. The next argument which was urged on behalf of the petitioner was that although the petitioner was to be restored to the same rank of General Manager on expiry of the period of two years, the petitioner after a period of two years has not been given back his original seniority. This argument and aspect I need not dilate upon, inasmuch as, learned senior counsel appearing for the respondent no.1/Bank has stated that they have no objection to the petitioner being given the original seniority as existing on the date of the penalty order and not reducing the seniority of the petitioner. This argument of the petitioner is also disposed of accordingly.

13. The second last argument which was urged on behalf of the petitioner during the course of oral hearing was that the respondent no.1/Bank has a policy of staff accountability, and which policy is dated 17.8.2001, and in terms of this staff accountability policy, petitioner should not have been imposed the punishment by the departmental authority. In furtherance of this argument urged on behalf of the petitioner, I asked the petitioner to show me any clause in this policy dated 17.8.2001 which provided that even if infractions are found of an officer then only because an officer such as the petitioner is stated to have acted bonafide, then such person/petitioner cannot be imposed any punishment by the departmental authority, and to this query, no clause of this policy dated 17.8.2001 of the respondent no.1/Bank could be pointed out on behalf of the petitioner that since the petitioner has acted bonafide, petitioner cannot be visited with any penalty although infractions have been found against the petitioner/charged official. This argument urged on behalf of the petitioner is also therefore rejected.

14. The last argument which was urged on behalf of the petitioner is that the petitioner has been unnecessarily discriminated and singled out for punishment, whereas, other persons have been left out. So far as this argument is concerned, it is noted that roles of various officers over a period of time were duly examined by the management of the respondent no.1/Bank, and after examination of the roles of various officers, ultimately two officers being the petitioner and his immediate next superior officer Mr. M.H. Jhurani were found to be violative of the rules of the respondent No.1/Bank and hence these two officials were proceeded against departmentally. As already stated above, Mr. M.H. Jhurani was imposed the punishment of reduction of rank from Chief General Manager to General Manager, and therefore, it cannot be stated by the petitioner that only he has been singled out and no other person for the same set of allegations contained in the article of charges has been imposed the penalty. This argument of the petitioner is therefore also rejected.

15. No other issue or argument is urged before this Court except those as have been dealt with above.

16. Dismissed. VALMIKI J.

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