

(2012) 03 P&H CK 0155

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 10699 of 2002 (O and M)

Tarsem Lal Verma, Officer,
Oriental Bank of Commerce,
Morinda (Punjab)

APPELLANT

Vs

Oriental Bank of Commerce and
Others

RESPONDENT

Date of Decision: March 26, 2012

Acts Referred:

- Oriental Bank of Commerce Officer Employees (Discipline and Appeal) Regulations, 1982 - Regulation 15
- Penal Code, 1860 (IPC) - Section 120B, 420

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Final Decision: Allowed

Judgement

K. Kannan, J.

The only point urged for consideration is the manner of treatment of suspension period, as whether to be as on duty or not. It would lead to a query whether the prolonged suspension in the given circumstances was justified or not. This in turn will answer the question of whether the petitioner could have been denied the salary during the entire period of suspension as a period not spent on duty. The petitioner was a Manager in the Oriental Bank of Commerce and there had been a CBI complaint lodged against the petitioner and several others in August 1988. A criminal case was also registered but the Bank did no more than issuing an order of suspension on 13.11.1991 in contemplation of departmental action. The action did not get initiated but the criminal case prolonged and even during the pendency of the criminal court proceedings and before the charge-sheet had been filed, the petitioner had applied to the Bank to revoke the suspension on 10.05.1994. This request was rejected and still later on 14.09.1995, the petitioner's representation

made subsequently on 07.09.1995 was rejected on the ground that there was no provision for revocation of suspension orders in Discipline and Appeal Regulations.

2. When the criminal case was still pending, a charge-sheet was issued on 20.11.1997 in departmental proceedings and ultimately, the petitioner had been found partially guilty of some of the charges, when the Enquiry Officer submitted a report on 18.03.1999. The disciplinary authority proceeded to accept the findings of partial proof of charges rendered by the Enquiry Officer and after serving a notice of the enquiry report to the petitioner and receiving the petitioner's objection, imposed a punishment of reduction to 5 stages lower in time scale of pay with cumulative effect. By the same order, he was also ordered to be reinstated. The order further stated that the period of suspension from the Bank service would not be treated as period spent on duty for all purposes.

3. As regards the punishment, the only point for consideration, as we have already observed, is the justification for denying the petitioner the entire period of suspension as period not spent on duty. Regulation 15 of the Oriental Bank of Commerce Officer Employees (Discipline & Appeal) Regulations, 1982 provides for the manner of treatment of the period of service and the pay and allowances on termination of suspension. Clause 1 of Regulation 15 provides that where an officer was fully exonerated or when his suspension was unjustifiable, the petitioner shall be granted the full pay to which he should have been entitled. Clause 2 of the said Regulation provide that in all other cases, the employees would be granted such portion of pay and allowances as the competent authority might direct.

4. The contention made by the counsel appearing on behalf of the petitioner is that after the CBI case was lodged and when the suspension order was made on 13.11.1991, already 3 years had expired, but the Bank had not even chosen to initiate departmental action. There was no justification for continuing the petitioner in suspension especially when the criminal trial was prolonging and only in the year 1997, the Bank itself had thought fit to issue the charge-sheet. It is a known proposition of law that criminal trial and departmental action operate in distinct fields and the mere pendency of a criminal court proceedings could not have deterred the Bank from proceeding with departmental action. More so, when the case was pending for nearly a decade and if the Bank chose not to issue even a charge-sheet till as late as November 1997, there was no justification for keeping the petitioner in suspension. I have not been shown through any rule or regulation that compelled the Bank to keep the petitioner in suspension only for the reason that the criminal case had been registered and a criminal trial was in progress. If there was no compulsion, then the initiation of action to proceed against him departmentally in the year 1997 could be seen to be only in a situation where the Bank must have taken note of the fact that the criminal trial was prolonging and, therefore, there was a need to initiate its own process. While the enquiry resulted in finding of the charges as established partially, it had by that time also the decision

of a criminal court which had acquitted the petitioner. The criminal court judgment was rendered on 16.05.2001. The order of punishment was issued against the petitioner on 04.05.1999 and the appeal was disposed off on 29.02.2000. The departmental action had, therefore, concluded before the criminal court proceeding and, therefore, when the petitioner gave a representation subsequent to the judgment of the criminal court for reconsideration of the issue of punishment, there surely arose an occasion for the Bank to consider whether the suspension period could have been treated as not spent on duty. have seen through the copy of the judgment in the criminal court and Civil Writ Petition No. 10699 of 2002 (O&M) -5 -in para 40 of the judgment, the criminal court had held, "as such this accused Tarsem Lal (the petitioner herein) has not committed any offence of criminal conspiracy as argued by learned PP for the CBI. In view of above discussion, I hold that accused Tarsem Lal Verma,.....have not conspired with accused Pankaj, Bhalla,.....to commit any offence u/s 120-B r/w 420 IPC". By way of conclusion, the Court has observed that the petitioner was acquitted observing that "the prosecution has not been able to prove its case beyond the shadow of reasonable doubt.....". Although the last paragraph refers to the benefit of doubt as having been given to the petitioner, the preceding paragraph makes an affirmative finding that the petitioner had not been involved in any conspiracy for the offence u/s 420 read with 120-B IPC.

5. There was a power for an authority to treat the period of suspension as otherwise not spent on duty, then such a benefit should have been given to the petitioner. The punishment in so far as it extended to treat the entire period of suspension as not spent on duty, was oppressive and excessive. It was also a failure to exercise the power which vested in the authority in terms of the Regulation. I would hold the continuation of suspension from the time when the petitioner had given a representation for revocation, namely, on 24.05.1994 till date when he was reinstated as period spent on duty and he shall be entitled to full salary for the said period. The period of suspension from 13.11.1991 till May 1994 shall be treated as leave of the kind due. The amount that shall become payable shall be paid to the petitioner with interest at 6% from the date when he was reinstated till the date of payment. It is stated that the petitioner has since been superannuated. To the extent to which this order shall affect the pensionary benefits, it shall be carried out by a fresh calculation and the arrears released to the petitioner within a period of 12 weeks from the date of receipt of copy of this order. With these modifications, the impugned order shall stand modified as regards the punishment and the writ petition is allowed to the above extent.