(2011) 05 P&H CK 0318

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 22139 of 2010

The Nawanshahr Central Co-oprative Bank Ltd., Nawanshahr		APPELLANT
	Vs	
The Deputy Registrar (Enforcement) Punjab and Another		RESPONDENT

Date of Decision: May 13, 2011

Acts Referred:

- Punjab Civil Services (Punishment and Appeal) Rules, 1970 - Rule 8(11), 8(4)

Citation: (2011) 163 PLR 411

Hon'ble Judges: Augustine George Masih, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Augustine George Masih, J.

Prayer in the present writ petition is for quashing of the order dated 25.08.2010 (Annexure P-19) passed by the Deputy Registrar (Enforcement) Cooperative Societies, Punjab-respondent No. 1 setting aside the order of dismissal dated 27.11.2009.

2. The facts in brief of the case are that the petitioner-The Nawanshahr Central Cooperative Bank Ltd., Nawanshahr (hereinafter referred to as ''the Cooperative Bank'') detected an embezzlement amounting to Rs. 7,76,364/- in which three officials i.e. Sh. Ashwani Kumar, Branch Manager, Madan Lal, Accountant (respondent No. 2) and Harjinder Nam, Peon were involved. Out of this amount, a sum of Rs. 6,45,000/- were deposited by Ashwani Kumar and respondent No. 2.

3. A charge-sheet, on the basis of the embezzlement, was issued to Madan Lal. Along with the charge-sheet, list of witnesses and list of documents were attached. The charge-sheet is dated 12.03.2008. To the said charge-sheet, Madan Lal-respondent No. 2 sent a letter dated 19.032008 (Annexure P-4), wherein he admitted the fact that he had received the charge-sheet on 19.03.2008 but denied the charges leveled against him. He asked for supply of 14 documents, which were mentioned in the said letter, from the petitioner, which, according to respondent No. 2, were required to submit his reply to the charge-sheet and to prove his innocence.

4. A perusal of this letter shows tint it is not mentioned mat along with the chargesheet, there is no list of documents or list of witnesses attached although the charge-sheet does mention about the said documents attached with it The petitioner, vide die letter dated 28.032008, informed respondent No. 2 that the documents, as sought for by respondent No. 2 vide his letter dated 19.03.2008, could not be supplied to him but he was free to inspect the records and he would have access to the record relating to the charge-sheet on any working day at Branch Office, Ghumna.

5. Reply was filed to the charge-sheet, which is dated 07.04.2008 (Annexure P-6) and runs in 13 pages but in none of those pages, it was mentioned that respondent No. 2 was not supplied the list of documents or list of the witnesses.

6. An enquiry was held and after completion of the enquiry, the report was submitted by the Enquiry Officer on 03.08.2009 (Annexure P-10). Respondent No. 2 was supplied a copy thereof and a show cause notice was also issued. Respondent No. 2 did file his reply. Personal hearing was also given to respondent No. 2 but here also, no such objection with regard to the non-supply of list of witnesses or list of documents was taken. The order of dismissal from service was passed by the petitioner on 27.11.2009 (Annexure P-16). Against this order, respondent No. 2 preferred an appeal before the Registrar, Cooperative Societies, which is the appellate authority, which was marked to Deputy Registrar (Enforcement) Cooperative Societies, Punjab-respondent No. 1. The appeal was heard by the Deputy Registrar (Enforcement) Cooperative Societies, Punjab, which was accepted on 25.08.2010 with the following conclusions:

I have considered the arguments adduced by the counsel for the parties and perused the report, it is clear from the record that no list of witnesses and documents has been supplied along with the charge-sheet to the appellant. In the written statement supplied by the Bank, it is mentioned in Para 9 that the appellant was given the opportunity to inspect the record of the Bank. In case the appellant wants to see the record, the same can be done within a period of 15 days with the approval of the District Manager.

It is clear from the above discussion, that no embezzlement was committed by the appellant and enquiry was proved against him only on the grounds that he and the Branch Manager deposited the embezzled amount in the Bank while the fact is that the Manager has borrowed Rs. 4.00 lakhs from the appellant which was given by him by selling the plot that he purchased much before the date of embezzlement. Moreover, SP Hoshiarpur has exonerated him in the enquiry conducted by him. This fact is also not taken into consideration by the Bank while deciding the case against him.

So in view of the above, I set aside the order passed by the Bank authorities on 27.11.2009 and order mat the appellant would be treated under suspension and management is free to take disciplinary proceedings afresh in accordance with the provisions of the rules. The orders, which were reserved on 11.082010, have been written on 25.08.2010.

This has lead to the filing of the present writ petition wherein the petitioner alleges that the findings, as recorded by the Deputy Registrar firstly on the fact that no list of witnesses and documents was supplied along with the charge-sheet to respondent No. 2 as also with regard to the findings that there was no embezzlement by respondent No. 2, virtually leaves the petitioner-Cooperative Bank with no option but to exonerate respondent No. 2 and liberty as granted to the Bank authorities to proceed afresh in accordance with the provisions of Rules, is merely an eye wash. It is on these lines only that the arguments have been addressed by the learned senior counsel appearing for the petitioner.

6.1 In response to these submissions, counsel for respondent No. 2 has vehemently argued that it is the mandate of the Statute that respondent No. 2 should have been supplied not only the list of witness and documents but the documents itself and in support of this contention, he placed reliance on Rule 8(4) of the Punjab Civil Services (Punishment and Appeals) Rules, 1970 (hereinafter referred to as ''the 1970 Rules''). Reliance has also been placed by the counsel for respondent No. 2 on a Single Bench judgment of this Court in the case of Hans Raj Gupta v. State of Punjab 1992 (1) SCT 258 and another judgment of this Court in the case of State of Punjab through Collector, Ferozepur v. Kuldip Singh 1997 (1) SCT 693 as also a judgment of the Supreme Court in the case of State of U.P. v. Shatrughan Lal 1998 (4) SCT 162.

7. In response to the submissions of counsel for respondent No. 2, counsel for the petitioner has placed reliance on Rule 8 (11), wherein it has been stated that a Government employee may, for the purpose of preparing his defence, inspect within five days of the order or within such further time, not exceeding 5 days as the authority may allow the documents specified in the list referred to in sub-rule (3). He, on this basis, contends that only the list of witnesses and list of documents is required to be supplied to the delinquent employee along with the charge-sheet.

8. I have heard the counsel for the parties and have gone through the records of the case.

9. A perusal of the Rule, reliance whereof has been placed by the counsel for respondent No. 2, i.e. Rule 8 (4) of the 1970 Rules, would show that the punishing authority, while issuing the charge-sheet, shall deliver or cause to be delivered to the Government employee along with a copy of the charges, the statement of the imputations of mis-conduct or mis-behavior and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government employee to submit, within such time as may be specified, a written statement in his defence and to state whether he desires to be heard in person. This rule specifically mandates only the issuance of the list of documents which apparently was supplied to respondent No. 2, as is mentioned in the charge-sheet dated 12.03.2008. Had that not been so, respondent No. 2 would have, in his letter dated 19.03.2008 (Annexure P-4) while he was seeking certain documents to prepare his defence or when he had filed the reply to the charge-sheet dated 07.042008 (Annexure P-6), pointed out this fact but respondent No. 2 chose not to do so. Even during the enquiry proceedings and thereafter when show cause notice was issued along with the copy of the enquiry report, no such grouse was raised by respondent No. 2. This clearly indicates that the mandate of Rule 8 (4) of 1970 Rules had been complied with.

10. Counsel for respondent No. 2, however, submits that while interpreting this Rule, this Court has held that for compliance of the principles of natural justice, the delinquent employee is required to be supplied with the documents, on which reliance has been placed by the Management for proving their charges.

11. This may depend on case to case where the delinquent employee may prove before the competent authority the prejudice Which has been caused to him. In the present case, no such grouse was raised by respondent No. 2 either before the punishing authority or before the Enquiry Officer and thus, the contention, as raised by the counsel for respondent No. 2, cannot be accepted. The judgments relied upon by the counsel for respondent No. 2 in the facts and circumstances of this case would not be applicable.

12. Further, the mandate of the Rule is to be seen, which only requires the list of documents and the list of witnesses to be supplied with the charge-sheet, which were duly supplied. The documents, which were sought by respondent No. 2 for relying on and preparing his reply to the charge-sheet, were not required to be supplied to him but he had been given'' due opportunity to inspect the same and it was clearly stated in the letter dated 28.032008 that respondent No. 2 could inspect the said documents in the Branch office at Ghumna during office hours. No prejudice, thus, has been caused to respondent No. 2 as the documents were made available to respondent No. 2 for inspection, which opportunity respondent No. 2 had availed of.

13. A perusal of the order passed by the appellate authority indicates that the findings with regard to the non-embezzlement of the amount by respondent No. 2 given by this authority are on certain observations, which were not a part of the enquiry proceedings. The findings, therefore, on this aspect also cannot be sustained.

14. In the light of those findings, which have been recorded by the appellate authority, the operative part of the order is virtually left as redundant exercise which the Management has been called upon to perform. For this reason also, the impugned order dated 25.08.2010 cannot be sustained.

15. For me reasons mentioned above, the present writ petition is allowed. The impugned order dated 25.08.2010 passed by the Deputy Registrar (Enforcement) Cooperative Societies, Punjab-respondent No. 1 is hereby set aside. The appellate authority is directed to decide the appeal afresh on merits in accordance with law.

16. The parties are directed to appear before the Registrar, Cooperative Societies, on 26.05.2011, who shall, thereafter, proceed and decide the appeal in accordance with law.