

(2017) 01 MP CK 0178
MADHYA PRADESH HIGH COURT
Case No: 252 of 2008

R.P. Dubey

APPELLANT

Vs

Vasudevan Shyamdas Nair &
Anr.

RESPONDENT

Date of Decision: Jan. 4, 2017

Acts Referred:

- Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005, Section 2(1)

Hon'ble Judges: Sheel Nagu, S A Dharmadhikari

Bench: Single Bench

Advocate: Raju Sharma

Final Decision: Dismissed

Judgement

1. Appellant is present in person.

Shri Raju Sharma, counsel for the respondents / Bank.

2. This intra court appeal under Section 2(i) of M.P. Uchcha Nyayalay (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005 has been filed against the final order passed by the Writ Court whereby the petition assailing the penalty of reduction in time scale by two stages after conduction of enquiry has been dismissed.

3. The appellant / petitioner who appears in person has primarily assailed the order of the writ Court on various grounds which are enumerated below :-

(i) Principle of natural justice of audi alterem partem stand violated during enquiry proceeding due to non- supply of charge-sheet and documents on which the management placed reliance.

(ii) The decision of initiating disciplinary proceedings was not communicated to the petitioner / appellant.

(iii) For minor misconduct major penalty has been inflicted.

(iv) By Annexure P-18 petitioner was provisionally permitted to participate in selection for promotion to the JMGS-I (Junior Management Grade Scale -I) which amounts to condonation of the misconduct being inquired into and raises presumption of misconduct being minor in nature.

4. The penalty order of disciplinary authority dated 20.04.2004 and appellate order dated 16.06.2004 used distinct terminology for defining the penalty imposed.

5. The petitioner / appellant in person and the learned counsel for the Bank are heard. Record of the disciplinary proceedings produced by the learned counsel for the Bank is perused.

6. First and foremost ground on which the appellant has emphasized is that the disciplinary proceedings were conducted ex parte and without supply of charge-sheet by the enquiry officer by holding that appellant / petitioner is neither participating nor cooperating in the proceedings.

6.1 In this regard, the writ Court opined that petitioner / appellant for reasons attributed to him failed to avail the opportunity afforded to him to cross-examine the witnesses and deliberately boycotted the proceedings and further that the charge-sheet was duly served on him which is evident from endorsement of having received the same which finds mention on the list of documents appended to the charge-sheet.

6.2 We have gone through the disciplinary proceedings conducted by the enquiry officer starting from 21.06.2003 (P-32) till 19.11.2003. During this period several witnesses were examined by the presenting officer but petitioner declined to

cross-examine them for the reason that he had not been served with copy of the charge-sheet and supportive documents.

6.3 The statement of witnesses which are in shape of examination-in-chief indicate that they have supported the charge alleged against the petitioner / appellant.

6.4 It is further noticeable that in the proceeding dated 19.07.2003 till when two management witnesses Balwant Singh and Ram Kishore Shivhare had been subjected to examination- in-chief, the enquiry officer on repeated request of the petitioner directed the presenting officer to once more supply copy of the charge-sheet. Thereafter witnesses Sahab Singh Kushwah who was present on that date was subjected to examination-in-chief. However, the petitioner declined to conduct the cross- examination of the witness present.

6.5 Pertinently the proceeding of the enquiry dated 19.07.2003 reflects that the enquiry officer has written a note that despite availability of ample opportunity to the petitioner and of supply of charge-sheet which has been duly received at the beginning of the proceedings another attempt was made to again serve the petitioner with additional copy of charge-sheet and related document, but to no avail.

6.6 Thereafter the proceedings, continued and other management witnesses namely Anil Kumar Gaur and C.L. Patel were subject to examination-in-chief. The petitioner yet again declined to cross-examine these witnesses thereby compelling the enquiry officer to continue and conclude the proceedings.

6.7 The noting made by enquiry officer in the proceeding dated 21.10.2003 and 19.11.2003 elicits in clear terms that the enquiry officer had afforded due and sufficient opportunity to the petitioner to defend himself by initially supplying the copy of the charge-sheet which was duly received as per endorsement made on the list of documents on 18.11.2002 (Annexure P/6) and thereafter during the course of enquiry proceedings another unsuccessful attempt was made to serve additional copy of the charge-sheet and supportive document on the petitioner.

6.8 In majority of the proceedings when the management witnesses were subjected to examination-in-chief by the presenting officer the petitioner was present but declined to cross-examine the witnesses on the ground of not having received the charge-sheet.

6.9 In view of the above, this Court has no hesitation to hold and which is evident from the record that due and reasonable opportunity was afforded to the petitioner by supplying copy of charge-sheet along with the documents and by affording further opportunity to cross-examine the management witnesses.

7. As regards the ground of misconduct being minor for which major penalty was imposed, it is seen from clause-7 of the Memo of Settlement dated 10.04.2002 between management of 52 Class-A banks as represented by Indian Banks' Association and their workmen as represented by the All India Bank Employees' Association, National Confederation of Bank Employees, Indian National Bank Employees Federation for governing the procedure for taking disciplinary action against workman in the participating bank, the same defines expression "minor misconduct" while clause-5 defines the expression "gross misconduct". Clause 6 on the other hand vests disciplinary authority with the discretion to impose any of the nine penalties mentioned therein for proven gross misconduct.

7.1. The penalty imposed to the petitioner is reduction of lower stage in the time scale which is covered by clause 6(e) as one of the penalties imposable for gross-misconduct.

8. Now coming to the issue as to whether the misconduct found proved against petitioner was minor or major, it is seen from the impugned order of penalty and of the appellate authority that petitioner who was alleged with misbehavior towards customers arising out of bank's business and doing act prejudicial to the interest of the bank involving loss of goodwill of the bank. Both these kinds of misconduct are enumerated in clause 5(j) and 5(q) of the said Settlement as one of the gross misconducts.

8.1 Thus the submission of the petitioner that misconduct alleged and found to be proved is minor in nature deserves to be rejected.

9. As regards the other ground the petitioner was provisionally permitted to participate in the selection process for promotion to Junior Management Grade Scale-I (JMGS-I) during the course of the enquiry, this submission deserves to be rejected on its very face at the very outset. Para 3 of the letter dated 26.02.1998 (vide Annexure P/19) issued by Deputy General Manager, Circle Development Officer, Head Office Bhopal shows that employees who have been charge-sheeted for minor misconduct will be permitted provisionally to appear in the written test and interview for promotion. By relying upon this letter, the appellant contends that act

of bank to permit him to participate in the selection process for promotion during pendency of the enquiry clearly demonstrates that misconduct was minor in nature.

10. This Court has no hesitation to hold that the said provisional permission afforded to the petitioner cannot be stretched to the extent of rendering impugned penalty vitiated especially when the misconduct alleged and found proved was grave in nature. The occasion of condonation of misconduct or diluting the same would arise only when petitioner had been promoted between the period when the competent authority was in the know of the misconduct and the issuance of charge-sheet. In the instant case, the petitioner was allowed to participate in the selection for promotion during the pendency of the enquiry after issuance of charge-sheet, as per para 3 of the letter dated 28.02.1998. Thus, the said argument does not help the petitioner.

11. Lastly coming to the ground raised by the petitioner that non-communication of the decision of initiating the disciplinary proceeding vitiates the entire enquiry and the order of penalty deserves to be rejected at the very outset. The reason is simple.

Settlement which is binding on the rival parties does not provide for any consequence of non-compliance of provision contemplating communication of the order of initiation of disciplinary enquiry which is indicative of the provision being directory despite being couched in mandatory language and therefore non-compliance of such provision cannot lead to vitiation of the penalty. (Vide M/s Rubber House, Appellant Vs. M/s Excelsior Needle Industries Pvt. Ltd., AIR 1989 SC 1160). For ready reference and convenience the relevant extract is reproduced below :-

"31. The word "shall" in its ordinary import is obligatory. Nevertheless, the word "shall" need not be given that connotation in each and every case and the provisions can be interpreted as directory instead of mandatory depending upon the purpose which the legislature intended to achieve as disclosed by the object, design, purpose and scope of the statute. While interpreting the concerned provisions, regard must be had to the context, subject matter and object of the statute in question.

32. On a close scrutiny of the relevant rules referred supra in the light of the above principles of statutory interpretation, we are of the view that the non-compliance of rule 4(c) i.e. the non-mentioning of the quantum of arrears of rent, does involve no invalidating consequence and also does not visit any penalty.

33. From the above discussion we hold that the rules 4(c), 5(1) and 6 are not mandatory but only directory. In that view, we see no force in the contention of the learned counsel that the non-mentioning of the amount of arrears of rent due in the application for ejectment has adversely affected the proceedings of this case and as such the application for ejectment is liable to be dismissed on that score. Accordingly, we reject this contention also."

12. In view of the above, this court has no reason to take a different view than the one taken by the writ court and thus the impugned order is upheld for reasons mentioned therein and the one's enumerated above.

13. Accordingly, the order of the writ court is upheld and the writ appeal stands dismissed.

No cost.