

(1985) 11 DEL CK 0040

Delhi High Court

Case No: C.R. 928 of 1985

Ashok Kumar Sapra

APPELLANT

Vs

Union Bank of India

RESPONDENT

Date of Decision: Nov. 4, 1985

Citation: (1986) 29 DLT 278

Hon'ble Judges: D.K. Kapur, J

Bench: Single Bench

Advocate: A.B. Saharya and D.K. Malhotra and Sham Babu, for the Appellant; Sat Pal, for the Respondent

Judgement

D.K. Kapur, J.

This revision petition arises out of an application for interim injunction filed by the petitioner in a suit pending for trial before the learned Subordinate Judges 1st Class, to challenge certain penalties imposed against him by the defendant bank. After due enquiry the petitioner plaintiff was found guilty and the punishment given to him was reduction from scale III Officer in Middle Management grade to scale II which carries a lessees scale of pay and a further punishment of reduction of five steps in the lower grade. The petitioner's claim is that two major penalties could not be simultaneously imposed on him. The learned trial court found that there was substance in the matter and a *prima facie* case, so he granted the injunction as prayed.

2. The bank appealed to the learned Additional Senior Sub Judge, who found that there were two charges against the petitioner and two punishments had been imposed. In any event it was also held that there were remedies open to the plaintiff under the Union Bank (Officers Employees Discipline and Appeal) Regulations 1976 and resort could not be had to the Court. The appeal was allowed and injunction discharged.

3. In this revision, a show cause notice has been issued and I have heard the learned counsel for the parties, I admit the petition

4. As only a short point is involved, this matter can be dealt with immediately. Firstly, it is contended on behalf of the respondent that the Administrative Tribunal Act has come into force from 1st November, 1985. Hence these proceedings should be sent to the Tribunal. The contention is well founded inasmuch as most proceedings of this type have to be transferred but, we have found on enquiry that no notification has yet been issued u/s 14 of the Act, i.e. service proceedings involving local or other authorities under the control of Government of India have not yet been notified, so the proceedings cannot be transferred to the Administrative Tribunal. As soon as such a notification is issued then all proceedings except appeals would have to be transferred. I have made these observations as a question whether the suit has to be transferred may also arise.

5. The next question is what order should be passed in this revision? Learned counsel for the petitioner contends that two penalties have been imposed at one go by the bank, i.e. the petitioner has been demoted from scale III to scale II and also he has been lowered five steps in the lower scale. Learned counsel for the respondent urges that in fact there were two sets of charges against the petitioner and the eventual punishment was to lower the petitioner from one grade to the other as a punishment for one of those charges and to lower him in the time scale in the lower grade because of the second charge. Therefore, something can be said for each side and in such a situation, the status quo should normally be maintained, particularly, as the legality of the order is still to be investigated. I have, Therefore, given anxious consideration as to whether any injunction should be issued at this stage. I have no doubt that normally the Court should not give interim relief in a service matter involving a penalty unless there are very good reasons for doing otherwise. For instance, if a person is dismissed, or removed from service, his eventual fate is to be decided when the case is finally decided and not as an interim step in the process of deciding the suit or other proceeding. However, in the present case there appears to be an exception inasmuch as a penalty which appears to be capable of being given only as an alternative has been imposed along with the alternative. The relevant rule reads thus:

"Major Penalties:

(e) Reduction to a lower grade or post, or to a lower stage in a time scale."

6. The punishments are either to reduce the person concerned to a lower grade or post or to lower him in the time scale. What has happened in this case, is that the petitioner has been reduced to a lower post and then lowered in the grade, the result will be different. The upper scale in this case happens to be Rs. 1,875/- to 2,250/- and the lower scale happens to be Rs. 1200-70-1550-75-2000. If the petitioner was to be lowered five steps in the upper time scale before being lowered

to the lower grade, his salary would be Rs. 1,875/-. If he is lowered first to the lower time scale and then five steps down, his salary becomes Rs. 1,625/-. So, the result depends on which of the penalties is imposed first. There is something wrong in lowering the petitioner in the time scale in which the petitioner has never been, or was not, at the relevant time.

7. It, Therefore, seems that these two penalties cannot be consecutively imposed, because the first penalty i.e. reduction to a lower grade automatically results in a reduction of salary and the second penalty also reduces the salary. In sense, both these penalties are the same, i.e. the reduction in the effective salary. The question then is what should be the fair order in this case. I feel that the second part of the penalty should be restrained, i.e. the petitioner should be allowed to be placed in the lower grade, i.e. would stand reduced from grade scale III to scale II. This means that the petitioner would not hold a post in scale III but would hold a post in scale II and the bank would post him accordingly. The petitioner was drawing the maximum salary in scale III. So, he should draw the maximum salary in scale II which means that his effective salary would be Rs. 2,000/-. I make it clear that his order is being passed as a compromise formula for surmounting the difficulty involved in imposing the two penalties simultaneously. The order is without prejudice to the correctness of the Petitioner's claim that he should continue to hold a post in grade scale III but he lowered only in the time scale or his contention that the penalty order is totally bad. This is also without prejudice to the bank's claim that the penalty order is entirely valid. The order is being passed so as to allow the trial to continue without undue hardship to the petitioner. The revision petition is thus partly accepted. The parties are left to bear their own costs.