

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.2112/2008**

% **Date of decision : 17.03.2008**

R.M. Bansal Petitioner
Through: Mr.Umesh Singh, Advocate.

Versus

State Bank of India Respondent
Through : Nemo.

CORAM :-
HON'BLE MR. JUSTICE ANIL KUMAR

- | | |
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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

1. The petitioner has impugned the award dated 23rd January, 2006 of Central Government Industrial Tribunal cum Labour Court II upholding the action of the respondent/management in terminating the service of the petitioner with effect from 19th August, 1994 and further holding that the petitioner is not entitled to any relief.

2. The Ministry of Labour had referred by letter dated 22nd January, 1999 the following point for adjudication:

“Whether the action of the Management of State Bank of India in terminating the service of Sh.R.M. Bansal, Clerk-cum-Cashier w.e.f. 19.08.1994 is legal and justified? If not, to what relief the said workman is entitled?”

3. The petitioner contended that he was appointed as Clerk-cum-Cashier on 3rd April, 1980 and all of a sudden he was suspended on 17th June, 1985 and a charge sheet dated 16th September, 1987 was served upon him about 27 months after the suspension.

4. It is also stated that an FIR was also lodged against the petitioner with Police on 28th May, 1985 on the same charges and the criminal case was tried by the Additional Chief Judicial Magistrate till 4th October, 1993. The petitioner alleged that he raised an objection about continuation of inquiry proceedings as the criminal case was pending and, therefore, the inquiry officer adjourned the inquiry in order to ascertain the latest position of the case. The inquiry officer did not give his verdict on his objection, however, conducted ex parte inquiry, later on without intimation and notice to him and the inquiry report was given against him which was accepted by the disciplinary authority and an appeal filed by the petitioner against the decision of the disciplinary authority was also dismissed.

5. The respondent/management had contended that the petitioner was suspended by order dated 12th June, 1985 with effect from 19th June, 1985 pending disciplinary action and charge sheet dated 16th September, 1987 was issued to the petitioner. Regarding the criminal case, the management clarified that the customers had lodged an FIR against the petitioner and not the Bank and the allegations made against the petitioner in the FIR lodged by the customers of the Bank were different from the charges leveled against the workman by the respondent. According to the management, reasonable opportunity was given to the petitioner and he was found guilty of mis-conduct in departmental inquiry, of obtaining thumb impression of the customers on different blank papers and obtaining drafts in different names which were later on were not be en-cashed due to technical fault.

6. It was also contended that despite various opportunities given to the petitioner and the petitioner having admitted the knowledge of different dates of proceedings from 10th April, 1989 to 10th July, 1989, he did not participate in the inquiry proceeding thus declined to take part in the proceedings. The petitioner was also given show cause notice before imposing punishment and only after hearing his pleas and contentions the punishment of termination of his services was imposed

which punishment has been upheld by the appellate authority by a reasoned order.

7. The plea of the learned counsel for the petitioner is that the inquiry was pre determined and biased to punish the petitioner and he has been punished on account of a conspiracy. The disciplinary authority and the appellate authority have held relying on AIR 1976 Supreme Court 1080 that departmental proceedings do not stand on the same footing as criminal prosecution in which higher degree of proof is required and consequently merely on account of acquittal on technical grounds, the petitioner was not entitled to be discharged from the departmental proceedings initiated against him on account of obtaining thumb impression of the customers of the Bank and on the basis of that obtaining drafts in different names from their accounts.

8. Learned counsel for the petitioner is unable to point out as to how the petitioner has been prejudiced on account of departmental inquiry also being conducted for some time during the pendency of criminal case filed against the petitioner by the customers of the Bank. Learned counsel is also unable to show any rule that on account of his acquittal in the criminal case, the departmental proceedings are liable to be quashed as the charges before the departmental inquiry were not exactly the same. The petitioner had knowledge of the different dates on

which the departmental inquiry was conducted, however, petitioner opted to remain absent. In the circumstances, the petitioner cannot contend that the principles of natural justice has not been complied with.

9. The findings and inferences of the Tribunal are based on evidence and documents on record and there does not appear to be any manifest errors in them. This court in exercise of its jurisdiction under article 226 of Constitution of India is not to substitute its own inferences with the inferences drawn by the Tribunal. In *(2006) 2 SCC 373* , at page 378 *Govt. of A.P. v. Mohd. Nasrullah Khan* the Supreme Court had held:

11. By now it is a well-established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an appellate authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by reappreciating the evidence as an appellate authority.

10. Thus it is a settled position of law that in exercise of jurisdiction under Article 226 of the Constitution of India, the High Court is not interfere with factual findings of the lower courts and should restrain itself from re-appreciating evidence while exercising powers of judicial

review. Writ court is not to interfere with the orders of an inferior tribunal or subordinate court unless their order suffers from an error of jurisdiction or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. The objective of judicial review is that a person receives a fair treatment and objective is not to re-appreciate the entire pleas and evidence and draw inferences again. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court.

11. The other plea raised by the petitioner is that he was not given sufficient opportunity to cross-examining the departmental witnesses and the inquiry was held ex parte and he has been punished and he was not intimated regarding the dates of inquiry. From the perusal of the record, it is apparent that the petitioner had been sending the applications for postponement of inquiry proceedings and, therefore, it cannot be held that the petitioner was not aware of the dates on which the inquiry proceedings were listed and were taken up. From the record, it is also apparent that the petitioner was intimated about the various dates on which the inquiry proceedings were to be conducted, however, the petitioner remained absent despite having the knowledge

of the same. If the petitioner was not in a position to attend the inquiry proceedings on some of the dates, no reason has been disclosed as to why an authorized representative on behalf of the petitioner could not appear before the inquiry officer. The petitioner was intimated about the inquiry proceedings to be conducted on 24th July, 1989 and since the petitioner did not appear even on the said date, ex parte inquiry was held as it was held that the sufficient opportunities have already been given to the petitioner. The petitioner was unable to make sufficient cause for setting aside the ex-parte proceedings against him even before the Tribunal. The petitioner has not filed the copies of the alleged medical certificate produced before the inquiry officer or any other letters addressed to the inquiry officer to show that there was sufficient cause for non-appearance of the petitioner before the inquiry officer and the inquiry officer could not proceed ex parte against the respondent. The petitioner, in the facts and circumstances, is not entitled for any relief.

12. Perusal of the case law on the issue of the scope of interference in a domestic enquiry and applicability of the strict and sophisticated rules of evidence to the domestic enquiry clearly establishes that once a domestic tribunal based on the evidence arrives at a particular conclusion, normally it is not open to the Appellate Tribunals and courts to substitute their subjective opinion in the place of the one

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arrived at by the domestic tribunal. Thus if an enquiry held is consistent with the rules and in accordance with the principles of natural justice and the misconduct is proved, then the Tribunal has no power to substitute its own discretion for that of the said disciplinary authority, unless it is mala fide, arbitrary or the findings are quite perverse. If an enquiry is properly conducted, then the departmental authorities are held to be the sole judges of the facts and if there be some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be argued upon or disputed before the Tribunal. The following judgments rendered by the Supreme Court fortify the aforesaid conclusion:

- (i) Martin Burn Ltd. v. R.N. Banerjee 1958 SCR 514.
- (ii) State of Orissa v. Bidyabhushan Mohapatra MANU/SC/0361/1962.
- (iii) State of A.P. v. S. Sree Rama Rao MANU/SC/0222/1963.
- (iv) State Bank of India and Ors. v. Samarendra Kishore Endow and Anr. MANU/SC/0655/1994.
- (v) Regional Manager, Rajasthan SRTC v. Sohan Lal MANU/SC/0841/2004.
- (vi) Bharat Forge Co. Ltd. v. Uttam Manohar Nakate (2005) 2 SCC 489.
- (vii) Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane MANU/SC/0832/2004.
- (viii) Muriadih Colliery v. Bihar Colliery Kamgar Union MANU/SC/0131/2005.
- (ix) V. Ramana v. AP. SRTC MANU/SC/0539/2005.

(x) Hombe Gowda Educational Trust and Anr. v. State of Karnataka and Ors. MANU/SC/2522/2005.

(xi) L.K. Verma v. H.M.T. Ltd and Anr. MANU/SC/0703/2006.

13. The petitioner was given charge sheet and inquiry was conducted after intimating the dates to the petitioner. Despite knowledge the petitioner opted not to appear and was proceeded ex-parte. Even before the Tribunal the petitioner has not made out any sufficient reason for his non appearance. In the circumstances, on the grounds raised by the petitioner, the award of the Industrial Tribunal cannot be faulted on the grounds as has been raised by the petitioner.

14. Learned counsel for the petitioner has also contended that the punishment awarded does not commensurate with the charges made against the petitioner as no loss to the Bank was caused as the draft prepared by the petitioner were not encashed. This cannot be disputed by the petitioner that he got the draft of Rs.11,000/- and Rs.10,000/- prepared in the name of Md.Hasan and draft of Rs.3,500/- in the name of the Md. Yusuf from the account of Shri Umar Daraj after obtaining his thumb impression on different paper. He also got prepared a draft of Rs.10,000/- in the name of Mr.Imamuddin from Branch Skotty Tada and another draft of Rs.9,000/- in the name of Saroj Singh and the amount was deducted from the account of Qizad and Smt.Mumti.

Before the inquiry officer it was established that the thumb impression

of the customers of the Bank were taken on blank papers on the basis of which drafts were got prepared by the petitioner which tantamount to a misconduct. The conduct of the petitioner is of breach of faith which a customer reposes in an official of the bank. Merely because the drafts were not en-cashed and finally no monetary loss was suffered by the customers, does not mitigate the severity of the offence committed by the petitioner. The punishment awarded to the petitioner is on account of his gross misconduct and there is no perversity or manifest error in awarding the punishment for his gross misconduct.

15. Unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court/Tribunal, there is no scope for interference. In the present case the punishment awarded to the petitioner cannot be construed to be shocking in the facts and circumstances. The Apex Court in *B.C. Chaturvedi v. Union of India* (1995) 6 SCC 749 had observed on (SCC p. 762, para 18) as under

“ 18 . A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the

conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

16. In the facts and circumstances, the punishment imposed is not shockingly disproportionate. This Court in exercise of the jurisdiction under Article 226 of the Constitution of India will not be justified in substituting its own perception of the penalty to be imposed with the decision taken by the respondent in awarding the punishment of termination of service on account of gross misconduct on the part of the petitioner.

17. There are no grounds to interfere, in the facts and circumstances, or to invoke jurisdiction under Article 226 of the Constitution of India. The writ petition is, without any merit and is, therefore, dismissed.

March 17th, 2008.
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ANIL KUMAR J.