

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

+ W.P.(C) 7464/2007

ASHOK KUMAR PRASAD Petitioner
Through Mr. V K Sharma, Adv.

versus

UOI & ORS Respondents
Through None

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

% **ORDER**
15.05.2008

1. This is the second round of litigation. The petitioner had earlier filed WP(C) No.176/2000 challenging the order of dismissal passed by the Disciplinary Authority. The Disciplinary Authority had come to the conclusion that the petitioner, an employee of the bank, had fraudulently withdrawn Rs.18,000/- by misusing a blank withdrawal slip which came to his possession when Mr. Paras had given his pass book to the petitioner for updating entries.
2. This writ petition was disposed of on 6th October, 2006. It is the contention of the learned counsel for the petitioner that the matter was remanded back and the said remand was an open remand and not a

limited remand, restricted only to the question of quantum of penalty, which was to be decided by the Appellate Authority.

3. I have examined the judgment dated 6th October, 2006. In paras 12 and 13 of the said judgment, it was observed as under :

“12. The report of the Enquiry Officer in the present case is a detailed one. The Enquiry Officer has carefully scrutinized the available evidence and come to the conclusion that the charge against the petitioner that he misappropriated the funds stands proved. The Enquiry Officer rightly concluded that the repayment of the money subsequently by the petitioner to the complainants cannot dilute the gravity of the charge. It cannot be denied that customers of a bank repose trust and confidence in the bank staff and believe that their money is in safe hands and will not be misappropriated. Any breach of this trust requires to be dealt with seriously. The mere fact that the amount misappropriated is made good subsequently cannot exonerate the person who misappropriated the money of the charge of misconduct.

13. This court is also satisfied that sufficient opportunities were indeed given to the petitioner to defend himself in the Enquiry and he failed to avail of those opportunities. Therefore, there no merit in the submission that the petitioner he was denied a reasonable opportunity of defending himself in the enquiry.”

4. It is clear from the said paragraphs that learned Single Judge has given a categorical and clear finding that the petitioner was guilty of breach of trust. The misconduct was proved. It has also been observed that the Enquiry Officer had rightly concluded that repayment of money subsequently by the petitioner to the complainants cannot dilute the

gravity of charge. The Court observed that sufficient opportunities were granted to the petitioner and therefore there was no violation of principles of natural justice. The court, however, remanded back the matter to the Appellate Authority in view of the findings given in para 14 of judgment which reads as under :

“14. The only aspect of the matter which remains to be considered is whether the petitioner’s representation after the imposition of the penalty by the Disciplinary Authority have been considered by the Appellate authority of the respondent bank. In reply to para 15 of the writ petition where the petitioner has stated that he have representation on 26.4.1999 that his case may be reconsidered, the respondent no.1 bank in its reply has stated as under :

“With reference to the contents of para 15 of the petition, it is submitted that the petitioner has not preferred any appeal to the Appellate Authority challenging his dismissal and the time to file an appeal also expired long back. Hence, no question arose for reconsidering the case of the petitioner.””

5. It is clear from the aforesaid findings that the representation filed by the petitioner herein was not treated as an appeal and therefore the petitioner was denied benefit of consideration of his case by the Appellate Authority. However, the appellate authority was not required to re-examine the findings confirmed by the learned Single Judge. The remand was confined and restricted to observations in paras 16 and 17 of the judgment dated 6th October, 2006. The said observations are as under :

“16. While the stand taken by the bank that these affidavits cannot absolve the misconduct of the petitioner may be justified, these affidavits are certainly relevant for the question of quantum of punishment. Every misconduct does not warrant the same punishment. However, what should be proper punishment will depend on several factors and it is only in that context that the affidavits given by the two complainants become relevant.

17. Therefore, the limited relief that can be granted to the petitioner in this case is that the Appellate Authority should be directed to treat the letter dated 26.4.1999 written by the petitioner (Annexure-P7) as an appeal and consider the same along with affidavits dated 15.12.1999 of the two complainants (Annexure P-8 collectively). The Appellate Authority will also give the petitioner a personal hearing on the question of quantum of punishment.”

6. In these circumstances I cannot agree with the learned counsel for the petitioner that it was an open remand and the entire issue and controversy including the question whether the petitioner was guilty of any misconduct can be again examined and gone into by this Court. The question of misconduct and whether the petitioner was guilty stands concluded in view of the findings given by the learned Single Judge in para 12 of the Judgment dated 6th October, 2006 in writ petition no.1176/2000.
7. The other question which arises for consideration is whether the punishment imposed is disproportionate and this court can interfere with the punishment awarded. The law on the question is well settled. Courts and Tribunals while exercising the power of judicial review do not

normally interfere with the quantum of punishment unless it is shockingly disproportionate or illogical. Doctrine of proportionality is invoked when the punishment awarded shocks the conscience of the Court, in the sense that it defies logic or moral standards, (refer ***Commissioner of Police v. Syed Hussain***, reported in (2006) 3 SCC 173) In ***State of U.P. v. Sheo Shanker Lal Srivastava***, reported in (2006) 3 SCC 276 the Supreme Court observed that in such cases the Court does not go into the correctness of choice made by the administrative authority, or substitute the decision taken by it. The scope of judicial review is to the process by which the decision is finalized and not the decision itself. In this case it was also held that the Doctrine of reasonableness has gradually given way to the Doctrine of Proportionality, when the quantum of punishment is in question.

8. The petitioner herein was an employee of the Respondent- Bank. Banking business relies upon and has its foundation on trust and faith, specially when it comes to dealings between customers and employees of a Bank. In ***State Bank of India versus Ramesh Dinkar Punde*** reported in (2006) 7 SCC 212, the Supreme Court, when called upon to examine the legality and quantum of punishment

has held that an employee who commits misconduct for personal gain by jeopardising interest of Bank and customer does not deserve any leniency. In this case the Supreme Court referred to an earlier decision in Regional Manager, UP SRTC Vs. Hoti Lal reported in (2003) 3 SCC 606 where in it was observed as under:

“If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable”

In these circumstances I am not inclined to entertain the present writ petition and the same is accordingly disposed of.

SANJIV KHANNA, J.

MAY 15, 2008.
Vld/P/vld