

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

+ LPA 28/2010 & CM 632/2009

STATE BANK OF INDIA Appellant
Through Mr. Rajiv Kapur

versus

S. ELHANCE Respondent
Through Mr. H.K. Chaturvedi and
Ms. Anjali Chaturvedi,
Advocates

% Reserved on : 26th July, 2010
Date of Decision : 13th August, 2010

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

J U D G M E N T

MANMOHAN, J

1. Present Letters Patent Appeal has been filed challenging the judgment dated 22nd September, 2009 passed in C.W.P. 4104/1993 whereby the learned Single Judge has not only set aside the finding of the enquiry officer with regard to charges 1, 2, 5, 8(d), 8(e) and 9 but has also set aside the penalty. Learned Single Judge had further directed the appellate authority to reconsider the proportionality of punishment within four months on the charges sustained by him.

2. Mr. Rajiv Kapur, learned counsel for the appellant submitted that it was not permissible for the learned Single Judge to re-appreciate the evidence which had been considered by the enquiry officer, disciplinary authority and appellate authority. He submitted that the learned Single Judge had erred in law by acting as a Court of appeal and interfering with the findings of the enquiry officer, disciplinary authority as well as appellate authority. In support of his submission, Mr. Kapur relied upon *State of Haryana & Anr. Vs. Rattan Singh* (1977) 2 SCC 491; *B.C. Chaturvedi Vs. Union of India & Ors.* (1995) 6 SCC 749, *Bank of India Vs. Degala Suryanarayana* (1999) 5 SCC 762; *Chairman & Managing Director, United Commercial Bank & Ors. Vs. P.C. Kakkar* (2003) 4 SCC 364; *Ganesh Santa Ram Sirur Vs. State Bank of India & Anr.* (2005) 1 SCC 13, *Damoh Panna Sagar Rural Regional Bank and Ors. Vs. Munna Lal Jain* (2005) 1 LLJ 730; *V. Ramana Vs. A.P. SRTC*, (2005) 7 SCC 338 and *Ram Saran Vs. IG of Police CRPF* (2006) 2 SCC 541.

3. Having heard Mr. Kapur at length, we are of the view that the common thread running through all the aforesaid decisions is that the Court should not interfere with the decision of the enquiry officer, disciplinary authority and appellate authority unless they are illegal/irrational or suffer from procedural impropriety or shock the conscience of the court, in the sense that it defies logic or moral standards. The Supreme Court has repeatedly adopted and reiterated the test laid down in *Associated Provincial Picture Houses Ltd. Vs.*

Wednesbury Corpn., (1947) 2 All ER 680 (CA) wherein it has been stipulated that courts do not examine the correctness of the choice made by the enquiry officer, disciplinary authority and appellate authority but only review the decision making process to see if there is any deficiency in the same.

4. In fact, upon a perusal of the impugned order, we find that the learned Single Judge has applied the aforesaid test stipulated by the Apex Court and has given cogent reasons for setting aside the findings recorded by the enquiry officer with regard to charges 1, 2, 5, 8(d), 8(e) and 9. The relevant portion of the impugned order is reproduced hereinbelow :-

“14. To appreciate the aforesaid contentions, finding returned by the Inquiry Officer on the charges against the Petitioner, needs to be looked into for a limited purpose. This Court is conscious of the fact that the adequacy of the evidence is a domain, which is not to be treaded upon, nor the evidence led has to be re-appreciated by this Court. Relevance or quantum of evidence is not required to be done. To judge the correctness of the decision taken by the Disciplinary Authority is also not required to be looked into. The common thread running through all the afore referred decisions cited before this Court is that the Court should not interfere with Administrator’s decision, unless it is illogical or it suffers from procedural impropriety or it shocks the conscious of the Court, in the sense that it defies logic or moral standards. In nutshell, the Courts should not substitute its decision with that of the Administrator. The scope of judicial review is limited to see whether there is deficiency in decision making process. The Apex Court in “Indian Railways Construction Co. Ltd. Vs. Ajay Kumar” (2003) 4 SCC 579, has noticed the consistent trend of judicial opinion regarding scope for judicial interference in matters of administrative decisions.....

15. In the light of the aforesaid position of law, one can conveniently classify under **three heads**, the grounds on which administrative action is subject to control by judicial review. The first **head** is “illegality”, the second ‘irrationality’ and the third, ‘procedural impropriety’. These principles were highlighted by Lord Diplock in “Council of Civil Service Union vs. Minister for the Civil Service” (1984) 3 All.ER 935 (commonly known as CCSU case), which has been quoted with approval by the Apex Court in the above referred case. Thus, I proceed to test the impugned decision on the touchstone of reasonableness.

16. On the first two charges, the finding returned are that the Petitioner had not taken any permission to leave the Station and had claimed reimbursement of medical bills for treatment at Dehradun (outstation). Failure on the part of the Petitioner to take the permission of Competent Authority before taking treatment, outside the Headquarter, would not amount to ‘misconduct’, because neither the Inquiry Authority nor the Appellate Authority specified as to from which Authority the permission has to be sought. In any case, it cannot be said that the Petitioner had deliberately not sought the permission. Therefore, the finding returned on these two charges are clearly erroneous and liable to be quashed.

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24. The fifth charge relates to claiming of reimbursement for treatment of ‘adenoids’ by the Petitioner and since it was not reimbursable, therefore, this charge was found to be proved against the Petitioner in the inquiry proceedings.

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26. In view of the above, it becomes clear that ‘misconduct’ means a conduct arising from ill motive and acts of negligence, errors of judgments or innocent mistakes, do not constitute ‘misconduct’. It is nobody’s case that the Petitioner had deliberately taken reimbursement of the medical bill pertaining to treatment of ‘adenoid’ while knowing that it was not admissible. Therefore, the conduct of Petitioner claiming reimbursement for the treatment of ‘adenoid’ does not fall within the mischief of ‘misconduct’ and so finding returned on this charge is manifestly erroneous and is liable to be quashed.

27. The eighth charge is sub-divided into four parts. Inquiry Officer had found that charge 8(a), 8(b) and 8(c) do not stand proved and the findings returned on charge 8(d) and 8(e) do not appear to be in consonance with these charges and therefore, these two charges needs to be highlighted as under:-

“(d) In one of the bills the Stolin has been mentioned as tablet although it is toothpaste.

(e) He has taken such a long treatment for Pyorrhea, which is not possible as the medicines (antibiotics) are quite strong and their prolonged usage cannot be normally suggested by any medical practitioner as it will lead to serious side effects.”

28. The finding returned by the Inquiry Officer on the aforesaid two charges, is as under:-

“Under the circumstances, and the deposition of Defence Witness No.2, I hold this part of the charge as not proved. It is established that OPA had purchased certain medicines without prescriptions. Even the prescriptions are not specific as these do not mention the No. of days, the medicine is to be used etc.”

29. Aforesaid finding is quite generalized and does not contain the necessary details to support the charge nor the evidence referred to, does so. Clearly, the finding on charge 8(d) and 8(e) disclose utter non-application of mind not only by the Inquiring Authority but also by the Appellate Authority. Thus, the finding on charges 8(d) and 8(e) are liable to be quashed, being manifestly arbitrary.

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31. Upon reading the ninth charge, it becomes abundantly clear that this charge of Petitioner's wife taking treatment under two different systems of Medicines on the same day, i.e., on 16th August, 1983, being unlikely, is quite presumptive. The finding returned of this charge is based upon surmises and conjectures for the reason it proceeds on the assumption that it is not possible to take treatment from two doctors at a time. Where is the bar to taking treatment under two different disciplines of medicine for different ailments at a time ? There is utter non-application of mind by the Inquiry Authority as well as by Appellate Authority, as neither in

the charge nor in the findings returned, it has been alleged/concluded that for the one ailment, Petitioner's wife had taken treatment in two different disciplines of medicine at the same time. Therefore, the finding returned on this charge, being illogical, is liable to be quashed."

5. Moreover, we are informed that in accordance with the impugned judgment dated 22nd September, 2009, the appellate authority of appellant-Bank has once again decided to maintain the punishment for removal from service even on the charges sustained by the learned Single Judge. Consequently, we find that no ground for interference in the present appeal and accordingly, the same is dismissed but with no order as to costs.

MANMOHAN, J

CHIEF JUSTICE

AUGUST 13, 2010

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