

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

RSA No.231/2010

%

21st September, 2011

STATE BANK OF INDIA

Through: Appellant
Mr. Sudhir Nandrajog, Senior
Advocate with Mr. Anil Kumar
Sanghal, Advocate with Mr. D.P.
Mohanty, Advocate.

VERSUS

SHRI S.K. GARG

Through: Respondent
Mr. S.K. Garg, respondent in
person.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular Second Appeal under Section 100 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the appellate Court dated 10.5.2010, and by which judgment the appellate Court set aside the judgment of the original Court dated 6.8.2005. The trial Court by its judgment dated 6.8.2005, had dismissed the suit of the respondent/plaintiff. By the impugned judgment the appellate Court has decreed the suit of the respondent/plaintiff for declaration by

setting aside the punishment awarded to the respondent/plaintiff and entitling him to the consequential reliefs of gratuity, pension, back wages and all other benefits including promotion.

2. The following substantial questions of law are framed:-

(i) Whether an appellate Court can decide the appeal on arguments/issues which were not part of pleadings and even no issue was framed with respect to the same?

(ii) Whether the impugned judgment is not perverse by holding violation of principles of natural justice without even discussing how the same were violated and by avoiding the categorical findings of the trial Court contained in paragraph 16 of the judgment of the trial Court.

(iii) Whether at all there is any principle of law which allows comparison and reduction of punishment by comparison to another officer who is differently situated and against whom separate charges are framed, separate enquiry initiated and separate findings given?

(iv) Whether the impugned judgment violates the well settled principles of law that a civil Court does not sit as an appellate Court over the finding of the enquiry authority/disciplinary authority and further that imposition of punishment is not interfered with unless the punishment is such which shocks the judicial conscience.

3. The facts of the case are that the respondent/plaintiff was the Manager of the appellant-State Bank of India and was charge-sheeted with respect to various transactions. Disciplinary proceedings were conducted

and the respondent was found to be guilty. The appeal of the respondent before the appellate authority was also dismissed. Pursuant to the finding of guilt, the respondent was directed to be removed from service in view of the following two charges having been established against the respondent/plaintiff:-

“1. Shri Garg granted loans for purchase of machines to many borrowers, without conducting pre-sanction survey, with the sole purpose of obtaining subsidy amount from U.P. Schedule Caste finance corporation for which false utilization/sanction certificates, were issued even before grant of loan. The loans were adjusted within few days time out of the amount of banker cheque issued in favour of borrower for purchase of raw materials which indicate that loans were granted for obtention of subsidy. As such subsidy amount was misutilised and misappropriated. A few such instance are given at Annexure ‘A’.

2. The loan amount for purchase of milch cattles were not made in conformity of the IRDP/Special Component Plan and was disbursed in cash to the borrowers by Shri Garg in contravention of the Bank’s instructions. The end use of Bank’s funds was also not ensured. A few such instances are detailed in Annexure ‘B’.”

4. The respondent challenged the order removing him from service by filing the subject civil suit. The scope of the challenge to the orders of the disciplinary authority and appellate authority in a civil Court is now well settled. A civil Court does not sit as an Appellate Court to re-appraise the findings and conclusions of the disciplinary authority. An order of the disciplinary authority/Appellate Court is only to be set aside if the same is illegal/violative of the rules, violative of principles of natural justice, perverse

or there is violation of doctrine of *proportionality* in imposition of the punishment.

5. The main argument of the respondent was that principles of natural justice were violated. This aspect has been dealt with by the first Court by giving the following findings:-

“16. If the allegations of plaintiff are considered in light of above discussion, it becomes clear for various reasons that he has been provided sufficient, justifiable and ample opportunity for defending his case before the inquiry authority. It is on record that plaintiff was made to understand the charges. Further the plaintiff was admittedly provided various documents, he cross examined the department witnesses. Some adjournments were given at his request and he was accommodated on some other issues also. On perusal of the record of inquiry proceedings, it is clear that plaintiff participated in the proceedings and if there is some irregularity that cannot be made ground for challenging the proceedings as the same is, if there is any, not more than routine minor irregularity. The plaintiffs own stand is under doubt, for example, the stand taken by plaintiff regarding adjournment dt. 8.9.90 in pleadings and at the time of trial is contradictory. Since the departmental proceedings are quasi judicial in nature, so any strict adherence to provisions of CPC and evidence cannot be expected.”

6. The issue with respect to non-application of mind has also been rightly dismissed by the first Court by making the following observations:-

“18. As far as allegation as to non-application of mind by the appellate/disciplinary authority are concerned the same are not forceful as it becomes clear from perusal of findings of appellate authority that few of the charges were dropped and few were upheld. Such findings cannot be possible without application of mind. The other allegations of plaintiff have also not been established.”

7. The appellate Court by the impugned judgment has set aside the aforesaid findings and conclusions of the trial Court by holding that the principles of natural justice have been violated because another officer was charge sheeted for the same set of transactions but that officer was given only a minor penalty whereas the respondent was given the punishment of removal from service. The Appellate Court therefore held that there was violation of principles of natural justice and the violation of doctrine of *proportionality*. Since the conclusions of the Appellate Court are perplexing and ambivalent, I seek to reproduce the relevant observations so as to show that same are wholly illegal and perverse:-

“Thus, now I have to see as to whether principles of natural justice have been violated or not in the present case. In the present case the plaintiff though has not given any specific reasons and grounds on which basis he had assailed findings of inquiry report carried out against him but the court has to see as to whether principles of natural justice have been applied or not. In the present case plaintiff/appellant being the Manager of the concerned branch and one Mr. P.K.Sharma, Field Officer were instrumental in distributing loans and the Manager had sanctioned the loans on the recommendation of the Field Officer as he was duty bound to report to his Manager in correct manner. The Ld. Trial court has not at all taken into consideration the inquiry proceedings carried out against Sh.P.K. Sharma and the result thereof. Though the appellant has tried to assail the findings on the ground that termination letter contains number DAC 1128 though the inquiry report contains the number DAC 1278 and he had faced the inquiry by number 1278 and punishment has not been given with respect that that inquiry, hence the whole exercise is deemed to be waste as the same has also been admitted by DW-1 but it will be too technical to admit this preposition of appellant as

he was well aware as to under which charges he is facing the inquiry and mere writing of the wrong number in the removal letter will not vitiate the proceedings but certainly it can be seen as to whether the charges against Sh.P.K.Sharma and against him were same and if the charges against P.K.Sharma has not been proved or he has been given lessor punishment or had been treated differently then certainly the plaintiff has grievance and principles of natural justice can be stated to be violated. In the present case I am concerned with charge no.1, 2 and 6 framed against plaintiff in which he has been found guilty. Those charges were also framed against P.K.Sharm who was his junior and who was rather required to be more cautious while recommending the loan account. There are no allegations that both of them have connived with each other. The chargesheet of Sh.P.K. Sharma is Ex.DW-1/P-3 and first charge is almost same except that in case of the plaintiff an additional imputation of false utilization and issuance of sanction certificate even before grant of loan was made but the same was held to be not proved. Thus, it is not made out as to what happened to this equivalent charge framed against Sh.P.K. Sharma is also same as charge no.2 against the plaintiff and rather there are more account numbers in the case of Sh. P.K. Sharma than in the case of Sh. S.K.Garg (10 account numbers were mentioned in case of Sh.P.K. Sharma whereas 3 were mentioned in case of plaintiff). Charge no.6 framed against the plaintiff he was able to bring on record the documents in his favour and it was held to be partly proved only. Sh.M.L.Jain, DW-1 admitted in cross examination that Sh.P.K. Sharma had appeared as a witness in the inquiry proceedings but it is made out from the proceedings that his evidence was not relied upon on the ground that he himself was facing charges. Whether Sh.P.K. Sharma was reliable witness or not could only be tested as to what happened to his inquiry. DW-1 has not given a constant statement regarding the questions raised with respect to Sh.P.K.Sharma. the notice u/O 12 Rule 8 CPC was served on the department and application was moved in the court for production of the

document with respect to inquiry of P.K.Sharma and order dated 18.9.01 was also passed by the court as the defendant admitted that he will file the respective documents but to no effect and in these circumstances vital piece of evidence has been withheld by the defendant and adverse inference can be drawn against them. IT has been held in AIR 1968 SC 1413 as well as in AIR 1988 Delhi 332 that when a party withholds the best evidence, adverse inference can be taken against them irrespective of the onus of proof on the parties. The fate of Sh.P.K. Sharma has not been brought on record by the defendant. The plaintiff rather suggested that he has been reinstated by the bank and suspension has been revoked by the witness could not admit or deny the same. In the hierarchy of administrative duties superior officer always bank upon his subordinate and signs the papers in good faith and rather Sh. P.K. Sharma being Field Officer was duty bound regarding all the formalities to be carried out and if he has been exonerated or given simple punishment then in the same set of circumstances the plaintiff cannot be made to suffer more than him. There is one letter Ex.DW-1/P-5 which shows that P.K. Sharma was given lighter punishment as mentioned in Para NO.4 of the plaint and in these circumstances the defendant has failed to explain as to why the case of plaintiff was treated differently and why he was given excessive punishment. Reliance is placed upon 2008(3) *Supreme Court cases* 273 *State of M.P. vs. Hazari Lal* wherein the proportionality of the punishment was discussed and it was held that disciplinary power must be exercised reasonably keeping in view the nature of offence and sentence imposed. It was also held in 1991(3) *Supreme Court cases* 213 *Ex-Naik Sardar Singh vs. UOI* wherein it was held that "punishment must be commensurate with the gravity of the misconduct and disproportionate severe punishment is arbitrary and open to the court interference". It was also argued by the appellant that though initially some minor punishment was given on P.K. Sharma but later on, on his representation the same was also withdrawn. I am not commenting upon any of the documents but certainly the

case of the plaintiff cannot be differentiated from the case of Sh.P.K.Sharma and he should have been treated in the same fashion. It has been made out from the record that he was treated differently without giving any reasons though act of Sh.P.K.Sharma was graver than him as explained above. Thus, in these circumstances I hereby reverse the findings of issue no.1 and 2 of the Ld. Trial Court and decide these issues in favour of the plaintiff and against the defendants and it is held that plaintiff is entitled to the same treatment as Sh.P.K.Sharma and as nothing specific has been brought on record regarding the fate of Sh.P.K. Sharma, hence the plaintiff is entitled to the declaration as well as consequential relief deeming him in service after taking his case at par with that of Sh.P.K. Sharma. Issues are decided accordingly.”

8. A reference to the aforesaid observations of the Appellate Court shows that on the one hand, Appellate Court agrees that no specific grounds or reasons have been given for the respondent to contend that there have been violation of principles of natural justice, however, in the same breath, the Appellate Court very surprisingly states that it is however for the Court to see whether the principles of natural justice have been applied or not. I fail to understand this rationale in the impugned judgment. Further, the Appellate Court has proceeded to set aside the judgment of the first Court only on a comparison of the proceedings and the punishment imposed on Mr. P.K. Sharma as compared with the respondent. This line of reasoning is also clearly fallacious because two independent proceedings against two independent persons who hold different posts and against whom different charges are levelled, and who have different duties, cannot be said to be similarly situated for requiring the implementation of doctrine of

proportionality by reducing the punishment as given to the respondent who was the Manager by referring to the minor punishment given to the Field Officer who was working under the respondent-Manager of the bank and at a less responsible post. Further, how the Appellate Court has used the reasoning with respect to Mr. P.K. Sharma, the Field Officer, is not understood because the issue with respect to violation of doctrine of *proportionality* by referring to the facts of Mr. P.K. Sharma was not even the case as per the plaint and on which aspect no issue was framed. Since no issue on the aspect of alleged violation of doctrine of *proportionality* was framed, it is for that reason that the first Court has not gone into that aspect. Therefore one fails to understand as to how the Appellate Court has picked up and decided an issue of doctrine of *proportionality* by comparison with the punishment awarded to another person Sh. P.K. Sharma. The limited arguments which were raised on behalf of the respondent before the first Court are contained in paras 12 and 13 of the judgment of the first Court and which read as under:-

“12. Ld. Cl. for plaintiff argued that in the present case the plaintiff has challenged various infirmities in domestic inquiry, issue of charge sheet, finding of inquiry authority and disciplinary authority as well as appellate authority besides the order of removal of the plaintiff. He argued that there has been inordinate delay in issuing various charge sheets which has not been duly explained by defendants. As many as three charge sheets have been issued for similar charges for the alleged irregularity at the same period. In this regard he relied upon
1. M.D.Palmer vs. Y.B.Zala (1980 LIC 89)
2A. Malalchammy vs. Director of Health Services 1989 LIC 1967 Madras

3. Gurcharan Singh vs. UOI (1989 LIC-NOC 63)
4. Binayaka Dutta vs. State of West Bengal 1989 LIC NOC 78
5. State of M.P. vs. Bani Singh (1990 LIC 1488)

13. Counsel for plaintiff has further argued that charges were completely vague, lacking in material particulars and the charges were neither definite nor specific and findings were withdrawn proper application. In this regard he relied upon 1971 LIC at pg.460, 1989 LIC CASE NOC 9, 1989 LIC NOC 39, 1989 LIC NOC 184. Further he argued that the inquiry proceedings also suffer from various infirmities; that all witnesses were not produced for cross examination and there has been connivance between inquiry officer and presenting officer. Further that findings of inquiry authorities are biased and similarly the finding of disciplinary authority. In support of his arguments, id.cl. for plaintiff has relied upon various judgments which find mention in written submissions filed by him."

9. Therefore, I hold that the Appellate Court has fallen into a grave error in passing the impugned judgment by holding in a perverse fashion violation of principles of natural justice. The impugned judgment is also perverse because the appeal has been allowed in favour of the respondent/plaintiff on pleadings which never existed and on an argument which was never urged before the first Court and with respect to which no issue was framed, and by wrongly invoking the doctrine of *proportionality*.

10. Learned senior counsel for the appellant has rightly relied upon the decision of the Supreme Court in the case of ***Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia M. Lad (2010) 5 SCC 775*** to contend that though there have been separate enquiry proceedings of the respondent and Sh. P.K. Sharma, however even when there is a common enquiry between two persons, yet the same cannot mean

that different punishments cannot be imposed upon the two persons. Paras 11 to 16 of this judgment are relevant and the same read as under:-

"11. In *United Commercial Bank v. P.C.Kakkar*, 5 (2003) 4 SCC 364:2003 SCC (L&S) 468, this Court on review of a long line of cases and the principles of judicial review of administrative action under English law summarised the legal position in the following words: (SCC P.376, Paras 11-13)

"11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury case Associated Provincial Picture Houses Ltd v. Wednesbury Corpn.*, (1948) 1KB 223: (1947) 2 All ER 680 (CA) the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

12. To put it differently, 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. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the appellate authority to reconsider the penalty imposed.

13. In the case at hand the High Court did not record any reason as to how and why it found the punishment shockingly disproportionate. Even there is no discussion on this aspect. The only discernible reason was the punishment awarded in *M.L. Keshwani case*. As was observed by this Court in *Balbir Chand v. Food Corporation of India Ltd.*(1997) 3 SCC 371:1997 SCC (L&S) 808 even if a co-delinquent is given lesser punishment it cannot be a ground for interference. Even such a plea was not available to be given credence as the allegations were contextually different."

12. In *Union of India v. S.S.Ahluwalia* (2007) 7 SCC 257: (2007) 2 SCC (L& S) 627, this Court reiterated the legal position as follows: (SCC p.261, para 8)

“8.... The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved.”

13. In *State of Meghalaya v. Mecken Singh N. Marak* (2008) 7 SCC 580: (2008) 2 SCC (L&S) 431 this Court stated:- (SCC p. 584, para 14)

“14. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The jurisdiction of the High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice.”

14. The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the court/tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or a tribunal would not substitute its opinion on reappraisal of facts.

15.In a matter of imposition of punishment where joint disciplinary enquiry is held against more than one delinquent, the same or similarity of charges is not decisive but many factors as noticed above may be vital in decision making. A single distinguishing feature in the nature of duties or degree of responsibility may make a difference insofar as award of punishment is concerned. To avoid multiplicity of proceedings and overlapping adducing of evidence, a joint enquiry may be conducted against all the delinquent officers but imposition of different punishment on proved charges may not be impermissible if the responsibilities and duties of the co-delinquents differ or where distinguishing features exist. In such a case, there would not be any question of selective or invidious discrimination.

16.Does the present case make out discrimination in inflicting punishment? We do not think so. In the first place, the respondent and the two other delinquents may have been found guilty in connection with the same incident i.e. illegal grant of occupancy rights in respect of government land to five persons but the charges against the respondent and the other two delinquents cannot be said to be same or substantially similar.”

11. I have already referred to the fact that merely because for a common set of transactions two persons were charged would not mean that both have to be treated equally inasmuch as whereas the respondent/plaintiff was a Manager with different and higher set of responsibilities, the other person Mr. M.P. Sharma was only a Field Officer working under the respondent/plaintiff. The charges were also not completely identical and separate enquiry proceedings took place and separate evidences led with respect to enquiries against the respondent and the other enquiry against Mr. P.K. Sharma.

12. Accordingly, this second appeal is allowed by answering the substantial questions of law framed that the Appellate Court has committed gross perversity in giving an ambivalent finding with respect to violation of principles of natural justice. The Appellate Court by the impugned judgment has also violated the settled legal position that in a suit, no case can be set up *de hors* the pleadings, much less in an appeal. There is a further perversity in the impugned judgment of applying the doctrine of *proportionality* by comparing the punishment awarded to Mr. P.K. Sharma with the punishment awarded to the respondent/plaintiff when the charges against both the persons were not identical and the posts of both the persons were also different which meant different set of responsibilities.

13. The appeal is allowed. The impugned judgment of the Appellate Court dated 10.5.2010 is set aside. The judgment of the first Court dated 6.8.2005 is upheld and the suit of the respondent/plaintiff will stand dismissed, leaving the parties to bear their own costs.

SEPTEMBER 21, 2011
Ne

VALMIKI J. MEHTA, J.