

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

+ **W.P.(C) No.8342/2010**

% *Judgment reserved on: 14.09.2012*
Judgment delivered on: 06.12.2012

S. ELHANCE Petitioner

Through: Mr. H.K. Chaturvedi and Ms. Anjali
Chaturvedi, Advocates.

Versus

STATE BANK OF INDIA Respondent

Through: Mr. Rajiv Kapur and Ms. Vatsala
Rai, Advocates.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the instant petition, the petitioner has assailed the impugned order dated 15.05.2010, whereby he was removed from services. The present petition is the second round of litigation. Initially, the petitioner filed a petition being W.P.(C) No. 4901/1993. The same was disposed of vide order dated 22.09.2009, whereby the Court has held as under:-

“32. In conclusion, since in the finding of the Inquiring Authority on third and fourth Charge alone, have withstood the judicial scrutiny, therefore, the quantum of punishment needs to be looked into afresh by the

Appellate Authority. In fact, proportionality of the punishment has not been considered by the Disciplinary Authority nor by the Appellate Authority. This is a case where irregularity has been found in claiming reimbursement of medical bills over a period of seven years and the total amount of the medical bills is just about Rs.40,000/-, the overlapping period is also of hardly ten days. These factors have not been taken into consideration by the Appellate Authority. In any case, it is for the Appellate Authority to see as to what would be the appropriate punishment in the light of only two charges, out of nine charges being established against the Petitioner.

33. In this view of the matter, impugned order of Disciplinary Authority as well as the Appellate Authority returning findings against the Petitioner on the third and fourth charge being established calls for no interference by this Court. However, since findings returned on the other charges are hereby quashed, therefore, Petitioner requires to be heard afresh by the Appellate Authority on the quantum of punishment. Penalty of removal from service imposed upon the Petitioner is hereby set aside and the Appellate Authority is directed to reconsider the proportionality of the punishment and to pass appropriate order regarding nature of punishment to be imposed upon the Petitioner, within four months of being apprised of this order.

34. With above said directions, this petition is allowed to the extent indicated above.”

2. In view of the above judgment, all the charges against the petitioner were set aside except Charges No. 3 and 4, which are reproduced as under:-

“3. He has claimed reimbursement for himself and his family members in respect of concurrent treatment taken

simultaneously for overlapping periods under more than one or all, the three disciplines of medicines viz. Allopathy, Homeopathy and Aurvedic, which are contradictory to each other as few such instances are given in Annexure 'A' the list is illusive and not exhaustive. He has, thus, claimed reimbursement of fictitious bills prepared for overlapping period.

4. He has taken reimbursement during the last 7 years in respect of 52 diseases, some of which are incurable and has submitted number of bills for self and members of his family for substantial amount from Dr.P.K. Sukhbeti of Dehradun, when asked to appear before a Medical Board he submitted that he had no disease. He has thus claimed reimbursement in respect of bills most of which have been bogus. A few such instances are given in Annexure 'B', the list i.e. illustrative and not exhaustive."

3. Learned counsel for the petitioner has drawn attention of this Court to the order of the Disciplinary Authority, wherein it has been stated as under:-

"I have perused the enquiry proceedings and all evidence produced therein. I concur with the findings of Inquiring Authority except to part of this charge No.3 & 4 wherein the Inquiring Authority found the charged office guilty of claiming fictitious and bogus medical bills. The Inquiring Authority has concluded that the Homeopathic medicines can only be taken after discontinuing Ayurvedic and Allopathic medicines, as such the claim for reimbursement of medical bills for all the three systems of treatment is not in order."

4. The above said Authority has further stated as under:-

"I have fully gone into the facts of the case. After applying my mind independently as also the basis of

evidences adduced in the enquiry proceedings. I concur with the findings of the Inquiring Authority save against part of charges 3 & 4. Considering the gravity of charges established against Shri S. Elhance, I am of the opinion that ends of justice would be met if Shri Elhance is awarded punishment of 'Removal from Service' in terms of Rule 49(g) of the State Bank of India (Supervising Staff) Service Rules and to great the suspension period as such and recommend accordingly."

5. On appeal being preferred, the Appellate Authority vide its order dated 11.02.1994 has recorded as under:-

"The Disciplinary Authority on scrutinizing the records of the case concurred with the findings of the Inquiring Authority except with regard to charge Nos. (iii) & (iv) which he held as partly proved. Based on that view, the Disciplinary Authority recommended to the Chief General Manager, New Delhi, LHO, Appointing Authority that Shri Elhance be imposed a penalty of removal from service"; the period of suspension was also recommended to be treated as such. The Appointing Authority on an independent examination of the facts of the case agreed with the Disciplinary Authority's findings as also with the recommendations with regard to the quantum of penalty to be imposed. An order dated 27th April, 1993 was accordingly issued imposing on Shri Elhance the penalty of "removal from service" and the period of suspension was also treated as such."

6. Finally, the Appellate Authority has opined as under-

"5. Having thus considered the various issues raised by the appellant, I am of the opinion that the appellant has not been able to convincingly refute the findings. I am, therefore, not inclined to interfere with the order of the Appointing Authority removing him from service. The appeal, therefore, stands rejected."

7. Learned counsel for the petitioner has submitted that the petitioner neither submitted nor claimed the fake and bogus medical bills, which is against the Conduct Rules. As referred above, since vide judgment dated 22.11.2009, this Court quashes all the charges, therefore, directed the respondent to hear the petitioner freshly and passed the proper order. It is specifically mentioned in the aforesaid judgment that penalty of removal from service imposed upon the petitioner was set aside and the Appellate Authority was directed to consider the proportionality of the punishment and to pass the appropriate order regarding nature of punishment to be imposed upon the petitioner.

8. He further submitted that intention of the Court was that the Appellate Authority would consider the case of the petitioner on proportionality of the punishment but certainly less than the removal from service.

9. However, the Appellate Authority was adamant to pass the same order by ignoring the direction passed by this Court.

10. The learned counsel for the petitioner has relied upon ***B.C.Chaturvedi Vs. Union of India and Ors., AIR 1996 SC 484***, wherein the Supreme Court has observed as follows:

“Hansaria, J. (Concurring):- 21. I am in respectful agreement with all the conclusions reached by learned brother Ramaswamy, J. This concurring note is to express my view on two facets the case. The first of these relates to the power of the High Court to do "complete justice", which power has been invoked in some cases by this Court to alter the punishment/penalty where the one

awarded has been regarded as disproportionate, but denied to the High Courts. No doubt, Article 142 of the Constitution has specifically conferred the power of doing complete justice on this Court, to achieve which result it may pass such decree or order as deemed necessary; it would be wrong to think that other Courts are not to do complete justice between the parties. If the power of modification of punishment/penalty were to be available to this Court only under Article 142, a very large percentage of litigants would be denied this small relief merely because they are not in a position to approach this Court, which may, inter alia, be because of the poverty of the concerned person. It may be remembered that the framers of the Constitution permitted the High Courts to even strike down a Parliamentary enactment, on such a case being made out, and we have hesitated to concede the power of even substituting a punishment/penalty, on such case being made out. What a difference? May it be pointed out that Service Tribunals too, set up with the aid of Article 323-A have the power of striking down a legislative act.

22. The aforesaid has, therefore, to be avoided and I have no doubt that a High Court would be within its jurisdiction to modify the punishment/penalty by moulding the relief, which power it undoubtedly has, in view of long line of decision of this Court, to which reference is not deemed necessary, as the position is well settled in law. It may, however, be stated that this power of moulding relief in cases of the present nature can be invoked by a High Court only when the punishment/penalty awarded shocks the judicial conscience.”

11. On the other hand, learned counsel for the respondent has submitted that there is nothing on record that the Appellate Authority was unfair or

biased and the findings on the two charges, mentioned above, are not proper to award punishment of removal from service. The Appellate Authority gave opportunity of hearing to the petitioner and passed a well reasoned order dated 15.05.2010.

12. Learned counsel further submitted that as per Rule 32 (1) of the SBI (Supervising Staff) Service Rules (for short 'SBI Rules'), every employee shall confirm to and abide by these Rules. Rule 32 (4) states that every employee shall discharge his duty with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of the bank official. Rule 48 states that the breach of any of the provision of these Rules shall be deemed to constitute misconduct punishable under Rule 49.

13. The imputation against the petitioner was that he had claimed reimbursement, contrary to the Rules. A list of medicines, provided by the petitioner, shows details on which simultaneous treatment under different streams of medicine was taken by the petitioner and his family members. It shows that he claimed bills for simultaneous treatment for overlapping periods under Allopathic and Ayurvedic medicines on four-five occasions. Further, he claimed simultaneous treatment bills under Allopathic, Ayurvedic and Homeopathic medicines for his wife/children on nine or more occasions. Dr. S.K.Gupta, Medical Officer, Govt. Ayurvedic Dispensary, Hertbertpur, Dehradun, who was the prosecution witness No. 4 in the enquiry, categorically stated that Ayurvedic medicines could not be taken simultaneously with Allopathic and Homeopathic treatment. Therefore, the petitioner is liable for lapse. He cleverly exploited the

Sanskritised names of Ayurvedic diseases to fox the scrutinizing/paying officials and got away with it. This proves his doubtful integrity. He had been regularly claiming bills for some of the chronic diseases from 1982 to 1988. When he was asked to appear before the Medical Board, all his chronic diseases vanished overnight. This defies reason as to how could a man suffering from chronic diseases till a month ago be completely cured of all of them suddenly. The petitioner deployed a clever ploy by first denying access to the Medical Board to get his family members medically examined and wriggled out himself of the tight corner by pleading 'no disease'.

14. Learned counsel for the respondent has further submitted that even if the bills were not held fictitious or bogus but has been held against the petitioner is that he has furnished false information and claimed bills which are not in conformity with and contrary to the Service Rules for which he was imposed the penalty of 'removal from service'. Hence, making a false claim or furnishing any false information, as per Rule 80(12) of the SBI Rules, were proved. Therefore, the scope of judicial review is limited on the decision making process and not the decision.

15. On the quantum of punishment, the learned counsel for the respondent has relied upon a case ***Indian Railways Construction Co. Ltd. Vs. Ajay Kumar, 2003 (4) SCC 579***, wherein the Supreme Court has observed as under:-

“ Therefore, to arrive at a decision on "reasonableness" the Court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors.

The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the Court to substitute its view.... the test is to see whether there is any infirmity in the decision-making process and not in the decision itself.”

16. In the case of ***State of Meghalaya & Ors. Vs. Mecken Singh N. Marak***, 2008 (7) SCC 580@584, it has been observed as under:-

“While considering the question of proportionality of sentence imposed on a delinquent at the conclusion of departmental inquiry, the court should also take into consideration, the mental set up of the delinquent, the type of duty to be performed by him and similar relevant circumstances which go into the decision making process. If the charged employee holds the 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.”

17. In the case of ***The Managing Director State Bank of Hyderabad Vs. P. Kata Rao***, (2008) 15 SCC 657@662, it has been held as under:-

“ There cannot be any doubt whatsoever that the jurisdiction of superior courts in interfering with a finding of fact arrived at by the Enquiry Officer is limited. The High Court, it is trite, would also ordinarily not interfere with the quantum of punishment.”

18. Learned counsel for the respondent has further submitted that this Court under Article 226 of the Constitution of India has power for a judicial

review and if the conscious of the Court is shocked with the proportionality of the punishment, then the decision of the respondent can be altered. He has relied upon a case of ***State of U.P. Vs. Sheo Shankar Lal Srivastava (2006) 3 SCC 276 @ 285***, wherein it has been held as under:-

“ It is now well-settled that principles of law that the High Court or the Tribunal in exercise of its power of judicial review would not normally interfere with the quantum of punishment. Doctrine of proportionality can be invoked only under certain situations. It is now well-settled that the High Court shall be very slow in interfering with the quantum of punishment, unless it is found to be shocking to one's conscience.”

19. In the case of ***Dr. N. Balakrishnan Vs. Nehru Memorial Museum & Library Society & Ors., 2010 (12) DRJ 141@156***, wherein it has been held as under:-

“It is now trite that the judicial review in cases relating to departmental enquiry is extremely limited. The same is confined to adjudging the lack of jurisdiction, jurisdictional error, reasonableness of the decision, arbitrariness, discriminatory, violation of principles of natural justice, malice.”

20. In the case of ***Uttar Pradesh State Road Transport Corporation Vs. Nanhe Lal Kushwaha, 2009 (8) SCC 772***, wherein the Supreme Court has observed as under:-

“It is not only the amount involved but the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. 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.”

21. On the issues of misconduct, the learned counsel for the respondent has relied upon a case of ***Ganesh Santa Ram Sirur Vs. State Bank of India (2005) 1 SCC 13@28***, wherein the Supreme Court has held as follows:-

“The Bank Manager/Officer and employees and any Bank nationalized/or non-nationalized are expected to act and discharge their functions in accordance with the rules and regulations of the Bank. Acting beyond one's authority is by itself a breach of discipline and Trust and a misconduct.”

22. In the case of ***Chairman and Managing Director, United Commercial Bank Vs. P.C.Kakkar, (2003) 4 SCC 364@376***, wherein it has been held as under:-

“Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank.”

23. On the issue of pension, the learned counsel for the respondent has relied upon a case of ***V. Kasturi Vs. Managing Director, State Bank of India, Bombay & Anr., (1998) 8 SCC 30@40***, wherein it has been held as under:-

“Consequently occasion for an employee who is a member of the fund to make a request in writing to the Bank for getting the benefit of pension scheme as per Rule 22(1)(c) as amended would arise provided such an employee has completed 20 years of pensionable service and has obtained the right under the amended sub-clause (c) of Rule 22(1) to make his request in writing.

Meaning thereby those employees like the appellant who had ceased to be members prior to the said date and who might have completed 20 years of service in past will not be able to invoke the amended Clause (c) Rule 22(1) at any time after their earlier retirement.

24. On the issue of false claim, the learned counsel for the respondent has relied upon a case of ***Charanjit Lamba Vs. Commanding Officer, Army Southern Command, (2010) 22 SCC 314@317***, wherein the Supreme Court has held as under:-

“Having said that we need to remember that the quantum of punishment in disciplinary matters is something that rests primarily with the disciplinary authority. The jurisdiction of a Writ Court or the Administrative Tribunal for that matter is limited to finding out whether the punishment is so outrageously disproportionate as to be suggestive of lack of good faith.

Making a false claim for payment of transport charges of household luggage and car to Chandigarh was a serious matter bordering on moral turpitude. Breach of the rule requiring him to clear his electricity dues upon his transfer from the place of his posting was also not credit worthy for an officer. The competent authority was therefore justified in taking the view that the nature of the misconduct proved against the appellant called for a suitable punishment.”

25. On hearing Id. Counsels for the parties it is emerged that initially there were 9 charges against the petitioner. Charge No. 1 to 5 & 9 were proved and charge No. 6 to 8 not proved. The disciplinary authority imposed the punishment of removal from service, which was maintained by the appellate authority.

26. Being aggrieved, the petitioner filed W.P. (C) No. 4901/1993. Same was disposed of vide order dated 22.09.2009 as referred above whereby this Court held that 3rd and 4th charge alone have withstood the judicial scrutiny, therefore, the quantum of punishment needs to be looked into afresh by the appellate authority. It is further recorded that the impugned order of the disciplinary authority as well as the appellate authority returning findings against the petitioner on 3rd and 4th charge being established calls for no interference. Since findings returned on the other charges were quashed, therefore, the appellate authority was directed to hear the petitioner afresh. Accordingly, the penalty of removal from service imposed upon the petitioner was set aside. Thus, the charge No. 3 & 4 stands proved against the petitioner.

27. Vide impugned order dated 15.05.2010 after considering the submission of the petitioner, the appellate authority has recorded its findings that the instances quoted in the charge No. 3 & 4 are not a single act, but a series of planned and deliberate actions spread over a sufficiently long period of time in more than one place of posting involving a large number of bills. In charge No.4, it is alleged that the appellant claimed reimbursement for 52 diseases, but refused to appear before the Medical

Board saying that he had no disease. This establishes his malafide intention for claiming bills for non-existing diseases and amounts to misusing the Bank's medical facilities with a view to make profit out of it. This confirms the dishonest intention of the petitioner for wrongful enrichment which warrants the punishment of removal from service. Accordingly, the punishment of removal from service has been maintained.

28. The settled law is that the courts should interfere only when the punishment / penalty awarded shocks the judicial conscience. The decision of the administrator must have been within the four corners of the law and not one, which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The test is to see whether there is any infirmity in the decision-making process and not in the decision itself. If the charged employee held the position of trust where honesty and integrity are inbuilt requirement of functioning, it would not be proper to deal with the matter leniently. The doctrine of proportionality can be invoked only under certain circumstances.

29. In the present case, petitioner had claimed medical reimbursement contrary to the rules. The simultaneous treatment under different streams of medicines was taken by the petitioner and his family members. It shows that he claimed bills for simultaneous treatment for overlapping period under Allopathic and Ayurvedic medicine on different occasions. Moreover, he claimed simultaneous bills for Allopathic, Ayurvedic and Homeopathic treatment of his wife and children on 9-10 occasions.

30. Dr. S.K. Gupta, Medical Officer, Govt. Ayurvedic Dispensary,

Hertbertpur, Dehradun, who was the prosecution witness No. 4 in the enquiry, categorically stated that Ayurvedic medicines could not be taken simultaneously with Allopathic and Homeopathic treatment. The petitioner had been regularly claiming bills for some of the chronic diseases from 1982 to 1988. When he was asked to appear before the Medical Board, the petitioner deployed a clever ploy by first denying access to the Medical Board to get his family members medically examined and wriggled out himself of the tight corner by pleading 'no disease'. The petitioner furnished a false information and claimed bills contrary to service rules for which penalty of removal from service was imposed upon him.

31. The petitioner was working in a Nationalized Bank, where the required standard of integrity and honesty is very high. Therefore, the petitioner was expected to act and discharge his duties in accordance with the Rules and Regulations of the Bank. Acting beyond one's authority is by itself a breach of discipline and trust and a misconduct.

32. In view of the above discussion and settled law, I am not inclined to interfere with the decision of the respondent as it does not shock the conscience of this Court.

33. Accordingly, instant petition is dismissed with no order as to costs.

SURESH KAIT, J.

DECEMBER 06, 2012

sb/jg