

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

+ W.P.(C) No. 6637/2001

% **10th October, 2013**

K.S. KATHURIA Petitioner
Through: Mr. N.K.Vohra and Mr. Jitender
Vohra, Advocates.

VERSUS

STATE BANK OF PATIALA AND ORS. Respondents
Through: Mr. Vishnu Mehra and Ms. Sakshi
Mittal, Advocates.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition is filed by one Sh. K.S.Kathuria who has been dismissed from services in terms of the orders passed by the disciplinary authorities of the respondent no.1-State Bank of Patiala. Petitioner seeks quashing of the orders of the departmental authorities; of the disciplinary authority dated 6.3.2000 and the appellate authority dated 12.12.2001.

2. Before I turn to the arguments urged on behalf of the petitioner, it has to be noted that the petitioner disputed the content of the charge sheet,

however, during the enquiry proceedings petitioner gave a specific written

statement on 13.12.1999 admitting the charges. This letter of admission reads as under:-

“To

The Inquiry Officer,
Central Vigilance Commission
New Delhi-110023

ACCEPTANCE OF CHARGES

Sir,

I plead guilty to all the charges unconditionally.

Yours faithfully,

New Delhi

(K.S. Kathuria)

13.12.1999

Charged Officer”

3. In view of the aforesaid admission, no further enquiry was conducted and the disciplinary authority passed the order of punishment dismissing the petitioner from services and which order has been upheld by the appellate authority vide its order dated 12.12.2001.

4. It also needs to be mentioned at this stage that scope of hearing in a petition under Article 226 of the Constitution of India which is filed to challenge the order of the departmental authorities is extremely limited. Order of departmental authorities are challenged only if there is perversity in the findings or there is an issue as to lack of jurisdiction in the authorities

which passed the orders. In addition to the above grounds, orders of the departmental authorities can also be challenged on the ground of doctrine of proportionality for seeking lesser punishment than as imposed by the departmental authorities.

5. In the present case counsel for the petitioner repeatedly sought to urge that admission made by the petitioner is of no effect and the departmental proceedings are not validly held in which the management has not proved its case by leading of evidence and the charged official should be hence held not to be guilty. Reliance in this regard is placed upon the three judgments. First is the judgment of the Supreme Court in the case of ***Delhi Transport Corporation Vs. Shyam Lal AIR 2004 Supreme Court 4271.*** Second is the judgment of the Gujarat High Court in the case of ***Natavarbhai S. Makwana Vs. Union Bank of India and Ors. (1985) (II) LLJ 296 Guj*** and third is the judgment of a Division Bench of this Court in the case of ***Engg. Projects (1) Ltd. Vs. S.K. Malhotra 2006 RLR 369 (DB).***

6. Before I turn to the relevant paras of the aforesaid judgments which have been read in support of the arguments of the petitioner, it bears mention that counsel for the petitioner sought to argue by placing reliance upon para 18 of the writ petition that the letter of admission dated 13.12.1999 was dictated by the enquiry officer and it was got typed from the

steno in his chamber and which aspects are not denied in the counter-affidavit and therefore it is shown that the entire proceedings have to be set aside because petitioner was promised only one or two increments which will be stopped in a symbolic manner and he will be exonerated by giving him any other punishment.

7. To the aforesaid arguments urged on behalf of the petitioner, I give no credence whatsoever inasmuch as not only is the petitioner not an illiterate person; he was in fact the manager of a bank; but what is relevant to note that the petitioner after admitting to the charges in terms of his letter dated 13.12.1999, even when the first opportunity came for questioning his admission at the time of making representation to the disciplinary authority against the enquiry officer, petitioner in his representation dated 19.1.2000 again admitted that he did in fact make admission admitting to the guilt. He only however stated that this was done by him because petitioner could not afford to sustain another heart attack. The relevant portion of this representation dated 19.1.2000 of the petitioner reads as under:-

“In this connection, I have to submit that the charges, as contained in the Charge-sheet served on me on 16-12-1998, were admitted by me unconditionally, though I could have proved my innocence and that there had been no malafide on my part. More so on account of constraint of my indifferent health and to save myself from the agony of mental humiliation at the fag end of my career (retiring on 31-03-2000), I had no alternative but to admit the charges, since I cannot

afford to sustain another heart attack. Needless to add, I was operated for Bypass in September 1995 and as such on the advice of my family and for the best interest of my family, it was decided by me to avoid all stress and strains coupled with humiliation in the departmental enquiry and as such to admit the charges leveled against me in the Charge-sheet.”

8. In view of the above, I have no hesitation to hold that once the petitioner admitted the charges against him in terms of his letter dated 13.12.1999, and again reiterated the same in his letter dated 19.1.2000, it does not lie in the mouth of the petitioner to claim that there was any alleged coercion or any promise to exonerate him as stated in para 18 of the writ petition. I may note that facts which are stated in para 18 of the writ petition, if were correct, ought to have been mentioned at the first instance and which was to be in the representation of the petitioner dated 19.1.2000, but the petitioner made the averments which are made in para 18 of the writ petition only for the first time before this Court. Therefore I reject the argument that the admission of the petitioner does not bind him or that in spite of the admission full fledged enquiry had to be conducted. Once, admissions are made, and they are not even asserted to be erroneously made or sought to be withdrawn on the first opportunity when it ought to have been done so, I do not think that such admissions thereafter having been made and re-affirmed can be withdrawn subsequently to claim by this writ petition that full fledged enquiry should have been made.

9. The judgment of the Supreme Court in the case of ***Delhi Transport Corporation(supra)*** relied upon by the petitioner in fact goes against the petitioner because in the facts of the said case after admitting to the guilt by the workman, Industrial Tribunal set aside the punishment on the ground that the enquiry officer had no evidence except the hearsay evidence and the learned Single Judge of the High Court set aside the findings of the Tribunal but the Division Bench of the High Court set aside the judgment of the learned Single Judge. Supreme Court set aside the judgment of the Division Bench and in fact observed in para 7 of the judgment relied upon that it is a settled position of law that admission is the best piece of evidence against the person making admission. No doubt, it is stated that it is open to the person making the admission to show why the admission is not to be acted upon, however, in the facts of the present case where the petitioner re-affirmed his admission in terms of his letter dated 19.1.2000, I do not think that petitioner can be allowed to argue that admission should not be acted upon.

10. So far as the judgment of the Gujarat High Court in the case of ***Natavarbhai S. Makwana (supra)*** is concerned, it may be noted that the facts of that case were peculiar because details with regard to misconduct were not given in the chargesheet. This is not so in the present case where

the chargesheet is a detailed chargesheet accompanied by annexures giving details of the various transactions in question. There are specific allegations against the petitioner of allowing cheques to be cleared beyond the sanctioned limit, not making entries in the register with respect to the dishonoured cheques of the party and thereby causing false inflation in the available balance for utilization by the customer and also of not reporting the over drawings to the appropriate authorities and in fact concealing the same. The result of the illegal acts of the petitioner was that benefit of an amount of ₹14 crores was taken by the customer. No doubt, 14 crores as compared to a limit of 100 crores which is alleged to have been given to the customer may be relatively less, but in the absolute sense surely the sum of ₹14 crores is a large amount. Therefore, clearly benefits were taken by the customer of huge amounts and the fact that subsequently the amounts were adjusted cannot take away of the indiscipline and infraction committed by the petitioner by allowing benefits of crores of rupees in the account of the customer. The judgment in the case of *Natavarbhai S. Makwana (supra)* is therefore distinguishable on facts.

11. So far as the Division Bench judgment of this Court in the case of *Engg. Projects (supra)* is concerned, once again the said judgment goes against the petitioner because in the said judgment, Division Bench has held

that if perusal of the enquiry proceedings show that charged official admits the charges against him no evidence is thereafter required to be lead against the charged official and he can straightway be given punishment. I therefore fail to understand as to how the said judgment supports the petitioner. If the contention of the petitioner is that after the impugned orders of the departmental authorities are sustained he would not be given certain monetary benefits including gratuity, then, at that stage, that issue would be examined as to whether after the orders of the departmental authorities are taken as final, what would be the monetary benefits which would be available to the petitioner. Therefore the judgment in the case of *Engg. Projects (supra)* in fact goes against the petitioner.

12. The next point which was argued on behalf of the petitioner was that in the present case petitioner's appointing authority was Chief General Manager, however, he has been removed by the General Manager who is below in rank than the Chief General Manager and therefore the order of the disciplinary authority is liable to be set aside on this ground itself. As a sequitur of this argument, order of the appellate authority is also challenged by arguing that the order of the appellate authority is by the Chief General Manager who actually ought to have been the disciplinary authority and if the appellate authority is the Chief General Manager, appeal hence

cannot be decided by the Chief General Manager which has been done in the present case.

In this regard, once again the arguments urged on behalf of the petitioner are misconceived because petitioner himself has filed Annexure P-5 to show delegation of powers of the appointing authority of the respondent no.1-bank dated 7.3.1996. This circular shows that an MMGS-III officer whose appointing authority was the Chief General Manager by virtue of this circular OPD/14 dated 7.3.1996 became the General Manager. Therefore, the appointing authority of the petitioner is the General Manager and therefore since the disciplinary authority which has passed the order in this case is the General Manager it cannot be said that the petitioner has been dismissed in service by a person of a post which is lower than the appointing authority. Appointing authority is the General Manager and since the disciplinary authority is the General Manager there is no illegality in order of the disciplinary authority.

In support of this argument, reliance on behalf of the petitioner is sought to be placed upon the judgment of the Supreme Court in the case of ***Rama Tyagi Vs. Delhi Development Authority 87 (2000) DLT 725.*** However, reference to this judgment itself shows that the judgment draws out the distinction between when a person is to be removed by an authority

by which “he was appointed” and the expression “appointing authority”. If as per the relevant rule what is required is removal by a person not subordinate to that by which “he was appointed”, the issue would have been different, but that is not so in the present case because the expression which is used is not “he was appointed” but the “appointing authority” as per the rules. Therefore, the judgment in the case of *Rama Tyagi (supra)* in fact distinguishes the said judgment as regards the facts of the present case and the contention which is urged on behalf of the petitioner in the present case. This argument of the petitioner is therefore rejected. Since the argument of the petitioner is rejected that disciplinary authority was an authority lower than the appointing authority, consequently the sequitur argument of the appellate authority not having jurisdiction because the appellate authority was a Chief General Manager also gets rejected in terms of the circular dated 7.3.1996 because admittedly the Chief General Manager is a post higher than the General Manager and the appellate authority therefore in this case could be the Chief General Manager as the disciplinary authority was the General Manager in the present case.

13. The next argument, which is urged on behalf of the petitioner in the present case is that actually the Chief General Manager acted as the disciplinary authority of the petitioner and therefore, the disciplinary

authority could not be an officer of the lower post being the General Manager. For this purpose, reliance is placed upon pages 106,107 and 64 of the paper book to show that as against another enquiry against the petitioner, disciplinary authority was a Chief General Manger. In my opinion, merely because in another case, bank may possibly have committed an error (and complete details of which case are not before me to finally opine one way of the other) cannot mean that the action taken in the present case should fall merely on account of any fault with respect to the disciplinary authority and the appellate authority in another case i.e the present case. In the present case, I have already held that as per the circular dated 7.3.1996, appointing authority is the General Manager and who could therefore be the disciplinary authority and disciplinary authority actually and in fact was the General Manager in this case. Also the appellate authority in the present was the Chief General Manager and the post of Chief General Manager is higher than the post of General Manager. The argument therefore urged on behalf of the petitioner is accordingly rejected because in the facts of the present case, actions which have been taken and the orders which have been passed by the disciplinary and appellate authorities are as per the rules/law.

14. The next argument which is urged on behalf of the petitioner is invoking of the doctrine of proportionality by relying upon the averments

which are made in para 27 of the writ petition alongwith similar averments which are made in the rejoinder-affidavit. The sum and substance of all these averments are that petitioner claims that actually the respondent-bank in terms of the transactions over the period in question from 1990 till 1994 has earned crores of rupees as profit, transactions in this case being irregular yet having not been so pointed out by the Chief General Manager of the Branch or by the inspecting officials, that the account of the customer stood squared off after the subject transactions, and therefore, it is argued that the petitioner should not to be imposed with the harsh punishment of dismissal from services.

15. The law with respect to Courts interfering with the punishment imposed by the departmental authorities is well settled. It is settled law that unless and until the punishment imposed shocks the judicial conscience, Courts do not interfere with the punishments imposed by the departmental authorities. It is seen in the present case that petitioner has admitted to all the charges, and which were very serious charges of wrongly allowing benefits of amounts of Rs. 14 crores beyond the sanctioned limit of customer, not making such entries in the register and conceding these aspects, and therefore, once such infraction and indiscipline is proved against the charged officer, merely because the accounts are subsequently

adjusted or the defaults are not pointed out by the Chief General Manager or Manager or that the bank earned crores of rupees cannot entitle the petitioner to challenge the punishment by invoking doctrine of proportionality. The ground of the petitioner that mistakes are on account of a computer fault cannot be accepted on account of the categorical admission made of the charges made by the petitioner.

16. One other argument which was argued on behalf of the petitioner is that appellate authority has passed an order in appeal without actually deciding the appeal filed but what has been decided is only a reminder. In my opinion, this argument is an argument of desperation because admittedly petitioner filed an appeal. Since the appeal was not decided petitioner gave reminders. Merely because after the reminder the appeal is decided does not mean that it is the reminder which is decided and not the appeal.

17. Finally, counsel for the petitioner argues that actually the appellate authority before passing the impugned order dated 12.12.2001 has passed two earlier orders dated 5.9.2001 and 19.9.2001 in the appeal. I have with utmost respect found the argument to be a ludicrous one because the two letters dated 5.9.2001 and 19.9.2001 only informed the petitioner that he is not eligible to get benefits of gratuity, pension etc and also with respect to

leave encashments and are not orders of the appellate authority deciding the appeal. These two letters are filed as Annexures P-34 and P-35 to the writ petition and the same read as under:-

Letter dated 5.9.2001

“ PFG/855
Sh. K.S.Kathuria,
31, Pragati Apartment,
Paschim Vihar,
New Delhi

Date 05-09-2001

Dear Sir,
PAYMENT OF GRATUITY/PENSION/PF BANK'S
CONTRIBUTION

With reference to your letter dated 9.7.2001, we inform that you are not eligible for any of the benefits i.e. gratuity, Pension & Bank's contribution to P.F. as you were removed from Bank's service for committing acts of misconduct.

Yours faithfully,

(CHIEF MANAGER (PPFG))

Letter dated 19.09.2001

PPFG/... 888
Sh. K.S.Kathuria,
31-Pragati Apartment,
Paschim Vihar,
New Delhi.

Dated: 19.09.2001

Dear Sir,
Payment of Leave Encashment

With reference to your letter dated 09.07.2001, we inform you that you are not eligible for payment of leave encashment because all leaves to the credit of an officer lapses on removal from service as advised by the Chief Manager, Per. Administration Department vide their office note dated 14.09.2001.

Yours faithfully,

(Chief Manager(PPFG))

18. I am really pained to note that most frivolous arguments have been urged on behalf of the petitioner. In view of the above, the writ petition is without merit and being a gross abuse of the process of law in a case where the petitioner has given benefit of huge amount of 14 crores to the customer and admitted the same, accordingly, the same is dismissed with costs of Rs. 50,000/-. Respondent no.1 can recover the costs in accordance with law.

OCTOBER 10, 2013
ib/Ne

VALMIKI J. MEHTA, J.