

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5265 of 2001

Kaushal Kishore Verma, son of Late Payare Lal Verma,
resident of Moh. Quarter No. 147, Reserve Bank of India
Colony, Digha, P.S. Danapur, District-Patna

.... Petitioner

Versus

1. The Reserve Bank of India , through the Governor,
Central Office, Mumbai
2. The Executive Director, Central Office, Department of
Personnel and Administrative Management, Mumbai.
3. The Regional Director-cum- Competent Authority,
Reserve Bank of India, South Gandhi Maidan, Patna-1.
4. The Enquiry Officer/Conducting Officer, Reserve Bank
of India, South Gandhi Maidan, Patna-1.
5. The Manager (Personnel), Reserve Bank of India, South
Gandhi Maidan, Patna-1.
6. Assistant Manager (Discipline), Reserve Bank of India,
South Gandhi Maidan, Patna-1.

.... Respondents

Appearance :

For the Petitioner/s : M/S Yaduvansh Giri, Sr. Adv.

For the R.B.I. : Mr. Chitranjan Sinha, Sr. Adv.

For the Respondent/s : Mr. Kaushal Kumar Jha, Adv.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT

Date: 29-07-2015

An order passed by the Disciplinary Authority
dated 30.09.2000, whereby punishment of dismissal
from service of the Reserve Bank of India has been
imposed upon the petitioner, is under challenge in the
present writ application. The Appellate Authority i.e. the



Executive Director of the Bank rejected the petitioner's appeal by an order dated 31.01.2001, which is also under challenge in this application. The petitioner has also sought for consequential relief in terms of reinstatement and back wages for the period, he remained out of service because of order of dismissal.

2. I have heard Mr. Y.V.Giri, learned Senior Counsel appearing on behalf of the petitioner and Mr. Chitranjan Sinha, learned Senior Counsel representing the Reserve Bank of India.

3. The petitioner was appointed as Clerk-cum-Note Examiner-cum- Point Note Examiner, Grade-II on 01.02.1972 in the Reserve Bank of India through letter dated 17.05.1999. A disciplinary proceeding was initiated against him with the issuance of chargesheet under the signature of the Chief Manager, Reserve Bank of India, Patna. It was alleged against him that he absented himself without any prior permission from the competent authority on twenty occasions for a total of 49 days.

4. This is not in dispute that the petitioner had absented himself on the days as mentioned in the chargesheet. An Enquiry Officer was appointed who



conducted the enquiry and found the charge against the petitioner to have been proved. There is no allegation that there had been any violation of any provision of Reserve Bank of India (Staff) Regulations, 1948, governing the disciplinary proceedings of the employees of the Bank in course of departmental enquiry. It is not the case of the petitioner that there had been violation of principles of natural justice at any stage in course of the departmental enquiry. The report of the Enquiry Officer was served upon the petitioner. A second show cause notice was issued to him, through letter dated 05.04.2000, seeking his comments as to why punishment of dismissal from service of the Bank be not imposed upon him under Reserve Bank of India Regulation 47(1) of the Reserve Bank of India (Staff) Regulations, 1948.

5. The disciplinary authority after taking into account the report of the Enquiry Officer, the petitioner's reply to the second show cause notice and other materials on record of the departmental enquiry, held the petitioner guilty of the charge levelled against him. For the purpose of imposing punishment upon the petitioner, the Disciplinary Authority took into account past conduct



of the petitioner and imposed upon him, by the impugned order dated 30.09.2000, punishment of dismissal from service of the Bank. From the said order of the Disciplinary Authority, it appears that prior to passing of the said order, on nine previous occasions, departmental proceedings on the charge of misconduct relating to unauthorized absence were initiated against him and on all occasions, the charges were found to have been proved. On each occasion, he was punished for his proved misconduct. After having held the petitioner guilty of the charge framed against him and taking into account the past conduct of the petitioner for which he was punished on nine occasions, the Disciplinary Authority came to the conclusion that dismissal from service would be the appropriate punishment, and he, accordingly, imposed the said punishment of dismissal from service of the Bank. From the impugned order dated 30.09.2000 passed by the Disciplinary Authority, it appears that the Disciplinary Authority deliberated on the issue as regards quantum of punishment and recorded reason why dismissal from service was befitting punishment to be imposed upon the petitioner.



6. The petitioner's appeal against the order of dismissal came to be rejected by an order dated 31.01.2001. The Appellate Authority did not find any procedural infirmity in course of the departmental enquiry. He also considered the petitioner's past conduct for the purpose of coming to a conclusion as to whether the punishment of dismissal from service of the Bank was appropriate, in the facts and circumstances or not. The Appellate Authority found that for his past misconduct, the Bank had earlier taken lenient view on categorical assurances given by the petitioner that he would mend his ways in future. The Appellate Authority did not find the punishment of dismissal from service of the Bank to be disproportionate to the misconduct, alleged against the petitioner, particularly in view of his past misconduct.

7. Mr. Y.V. Giri, learned Senior Counsel appearing on behalf of the petitioner has submitted that past misconduct of the petitioner was not a part of the charge framed against him and, therefore, that could not have been the basis or ground for consideration for the purpose of deciding the quantum of punishment to be



imposed upon him. He has contended that the order of the Disciplinary Authority as well as the Appellate Authority stand vitiated, as they have taken into account the petitioner's past misconduct, for the reason that the petitioner was not given any opportunity that his past misconduct would also be a ground for taking disciplinary action against him, in the departmental proceeding initiated with the issuance of the said chargesheet dated 17.05.1999. He has contended that had the petitioner been aware that his past misconduct would be a ground for taking disciplinary action against him, he would have explained it before the Disciplinary Authority. Such opportunity having not been given to the petitioner, the impugned action of the Disciplinary Authority is violative of principles of natural justice, Mr. Giri has contended.

8. Mr. Chitranjan Sinha, learned Senior Counsel appearing on behalf of the respondents-Reserve Bank of India, on the other hand, has submitted that there is no illegality in the decision of the Disciplinary Authority imposing punishment of dismissal from service of the Bank on the petitioner, taking into account his



past misconduct. He has submitted that the punishment imposed upon the petitioner, cannot be said to be shockingly disproportionate to the misconduct proved against him as he was in habit of remaining absent from the Bank's duty without any prior permission or even intimation on several occasions. He has further submitted that there being no procedural irregularity in the departmental proceeding, the scope of judicial review by this Court in a proceeding under Article 226 of the Constitution of India the present matter is confined as to whether the said punishment of dismissal from service could be imposed upon the petitioner for the charge levelled against him or not. He submits that once the Disciplinary Authority has taken a decision to impose a particular punishment upon an employee, this Court in exercise of power of judicial review under Article 226 of the Constitution of India can interfere only in exceptional circumstance where the punishment is found to be grossly excessive and shockingly disproportionate to the proved misconduct. He has further submitted that the Disciplinary Authority could have taken into account the past conduct of the petitioner for the purpose of deciding

as to which the punishment would be most appropriate, to be imposed upon the delinquent.

9. The petitioner has not been able to make out a case of any procedural irregularity in the departmental proceeding. There is no dispute over the fact that the petitioner had remained absent on the days as mentioned in the chargesheet. The petitioner does not dispute the fact that prior to issuance of the chargesheet dated 17.05.1999, on nine occasions, he was punished after issuance of chargesheets against him. In my opinion, habitual absenteeism in itself constitutes a gross misconduct for which, punishment of dismissal can be imposed upon an employee of the Reserve Bank of India. It is well within the jurisdiction of the employer, while considering the quantum of punishment to take into account the previous conduct of a delinquent. Such past misconduct may weigh the mind of the Disciplinary Authority for determining the quantum of punishment. The power of punishment, in my opinion, is within the employer's discretion and the High Court exercising power of judicial review under Article 226 of the Constitution of India does not normally interfere with



such action unless the punishment is found to be unduly harsh or grossly excessive. The submission of Mr. Giri, learned Senior Counsel appearing on behalf of the petitioner that the petitioner ought to have been informed prior to taking the disciplinary action that his past misconduct will also be considered is not acceptable to me in view of Supreme Court decisions in case of ***Govt. of A.P. and others Versus Mohd. Taher Ali reported in 2007(8) 656*** as well as ***Bharat Forge Co. Ltd. Versus Uttam Manohar Nakate 2005(2) SCC 489***, wherein the Court held that there could not be any hard and fast rule that merely because earlier misconduct has not been mentioned in the chargesheet, it could not be taken into consideration by the Disciplinary Authority. The Court held that consideration of earlier misconduct is often necessary to reinforce the opinion of the Disciplinary Authority.

10. I have perused the order of the Appellate Authority. The Appellate Authority has discussed the material on record, the order of the Disciplinary Authority as well as the reason for imposition of extreme punishment of dismissal from service of the Bank. The

order of the Appellate Authority does not suffer from any infirmity.

11. I, accordingly, do not find any merit in this application.

12. The application is, accordingly, dismissed.

13. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J.)

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