

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.27105 OF 1999

ORDER:

This writ petition is filed under Article 226 of the Constitution of India to call for the order passed by the first respondent vide proceedings No.63/ID/IRD(W)/ DA-7 dated 10.08.1999 declare as illegal, arbitrary, violative of rules and procedure, principles of natural justice and without any evidence, issue a writ of Certiorari.

02. The case of the petitioner is that while he was working as Armed Guard in the Branch of the 3rd respondent, he was allegedly misconducted himself, regular departmental proceedings were initiated and was found guilty for serious and grave misconduct, imposed penalty of removal from service by issuing the proceedings referred above. Challenging the same, the present writ petition is filed.

03. Respondents 1 to 3 are the General Manager (Personnel), the Deputy General Manager and Enquiry Officer, working in Syndicate Bank.

04. It is stated that the petitioner was served with charge sheet in CGS/HYD/98/139 dated 21.10.1998 by the 2nd respondent, alleging that at about 2.30 P.M. the petitioner manhandled physically, pushed out the two representatives of M/s.Aar Bee Enterprises, without enclosing the list of documents and list of witnesses. Thus non supply of documents, without disclosing the list of witnesses, without affording an opportunity to the petitioner to file his explanation for the charge, is violation of principles of natural justice. Consequently, an enquiry ordered by the respondents against the petitioner is liable to set aside. It is further contended that when the petitioner approached the Union representatives and handed over his case, pursuing entire facts, entrusted the same to defence representative and submitted a reply to

the charge memo vide letter dated 10.11.1998 to the 2nd respondent explaining the real facts and requested to drop further proceedings, viewing the matter leniently. Without applying mind, the 2nd respondent initiated departmental proceedings and therefore it is illegal.

04. The enquiry officer found the petitioner guilty for the grave misconduct without any evidence and, in fact, for the first charge about inebriated condition of the petitioner in discharging duties is not substantiated by any material, the respondents did not consider the attending circumstances including the non examination of representatives of M/s. Aar Bee enterprises, whom the petitioner allegedly manhandled and in the absence of their evidence, the petitioner cannot be found guilty for his alleged misconduct and, therefore, the order of the respondents under the proceedings No.63/PD/IRD(W)/ DA-7, dated 10.08.1999 is illegal and arbitrary. Finally, it is contended that the evidence on record is inconsistent and not supported the guilt of the petitioner. Despite it, the enquiry officer erroneously found the petitioner guilty and prayed to allow the writ petition setting aside the proceedings dated 10.08.1999 referred above.

05. During course of hearing, Sri J. Sudheer, learned counsel for the petitioner would contend that non furnishing of documents, the list of witnesses proposed to be examined, along with charge sheet, is nothing but violation of principles of natural justice. The second contention of the counsel for the petitioner is that in the absence of any medical evidence about intoxication and in the absence of evidence of representatives of M/s. Aar Bee enterprises, the finding recorded by the enquiry officer regarding inebriated condition of the petitioner is illegal and without evidence. The respondents 1 to 3 did not consider the evidence in proper perspective, committed an error in finding the petitioner guilty for the alleged act of drinking alcohol while

discharging duty as armed guard at the Bank and the same is liable to be set aside. Finally, it is contended that when the evidence with regard to inebriated condition is not accepted, the other charge of misbehaving with the officials of the Bank by the petitioner cannot be accepted, since the evidence on record is inconsistent on various material aspects, but the 3rd respondent without making any endeavour to appreciate the evidence, found the petitioner guilty. Apart from that the punishment imposed by the 3rd respondent and confirmed by the first respondent is shocking to the conscience of the Court and that apart the punishment imposed by the respondents is, disproportionate to the gravity of the misconduct and prayed to set aside the proceedings dated 10.08.1999 as illegal and arbitrary etc.

06. Sri A. Krishnam Raju, learned counsel for respondents, refuting the contentions of the learned counsel for the petitioner, would submit that non supply of documents which the Management wanted to rely on and list of witnesses is not contemplated under Memorandum Of Settlement, dated 10.04.2002, between the Management of 52 'A' Class Banks as represented by Indian Banks' Association and their workmen as represented by All India Bank Employees' Association, National Confederation of Bank Employees, Indian National Bank Employees' Federation. In the absence of any specific procedure contemplated under the Memorandum Of Settlement, which is governing the field of enquiries against the Bank employees, non supply of list of documents and the list of witnesses is not fatal and nothing prevented the petitioner to make a request either in writing or orally for supply of list of documents and list of witnesses enabling him to file explanation or representation on the charge memo.

But, having maintained silence throughout the enquiry, for the first time such contention is raised before this Court pointing out the violation of principles of natural justice. Apart from that no prejudice was caused to the petitioner on account of non supply of documents

proposed to be relied upon by the Management and list of witnesses. Therefore, on this ground, the penalty imposed against the petitioner cannot be set aside.

07. The learned counsel for the respondents further contended that the petitioner kicked and hurled chair against M.Ws.1 and 2 in disturbed mood, who are higher officials of the Bank, is a serious misconduct and using abusive language against representatives of M/s. Aar Bee enterprises and M.Ws.1 and 2 directly amount to serious misconduct and the punishment to be imposed against such employee is removal and it cannot be said to be disproportionate. In support of his contention, he placed reliance on a judgment of the Apex Court in **Mahindra and Mahindra Limited v. N.B. Narawade**^[1]. The learned counsel for the respondents finally contended that the powers of the High Court under Article 226 of the Constitution of India are limited and the Court cannot interfere with the enquiry report, unless, findings of the enquiry officer are perverse, not based on any evidence and the punishment is shocking to the conscience of the Court or disproportionate to the gravity of misconduct. Unless any bias or prejudice is shown or the punishment imposed by the disciplinary authority is disproportionate, this Court cannot interfere. Learned counsel for the respondents further drawn attention of this Court to the judgment of the Apex Court in **State of Orissa and others v. Bidyabhushan Mohapatra**^[2], based on the principles laid down in the above judgment, requested to pass appropriate order.

08. In view of specific contentions, it is the duty of this Court while exercising the power of judicial review under Article 226 of the Constitution of India, it shall examine whether the 3rd respondent violated the principles of natural justice in conducting disciplinary proceedings against the petitioner due to non supply of documents listed and list of witnesses. If so, whether it caused any prejudice to the petitioner.

09. The 2nd respondent, undisputedly, issued the charge sheet dated 21.10.1998 in reference No.CGS/HYD/98/139 specifically pointing out the misconduct attributed to the petitioner, more particularly, regarding misbehaviour with the representatives of M/s.Aar Bee Enterprises on 22.09.1998 at about 2.30 P.M. abusing them in vulgar language. The petitioner was found in inebriated condition. While in inebriate condition, when the proprietor of M/s.Aar Bee enterprises by name R. Sudhinder Kumar along with Santhosh visited the Branch, the petitioner grew wild and did not allow them to enter into the Branch in the absence of Manager. Due to unbearable violent conduct of the petitioner, the said R. Sudhinder Kumar approached the Zonal Officer and made a complaint about the misconduct of the petitioner and therefore at about 5.00 P.M., the Security Officer from Zonal Office along with R. Sudhinder Kumar revisited the Branch to verify the conduct, thereupon, the petitioner abused R.Sudhinder Kumar in Telugu and when the Security Officer tried to pacify, the petitioner suddenly became violent and kicked the chairs and thrown the chairs here and there. Thus the conduct of the petitioner is prejudicial to the interest of the Bank vide clause 19.5 (j) of the Bipartite Settlement and that drunken/riotous or disorderly or indecent behaviour on the premises of the Bank vide clause 19.5(c) of the Bipartite Settlement, called upon the petitioner to submit his explanation. The petitioner on receipt of charge sheet submitted his explanation. It was received by the Manager on 30.11.1998 explaining various reasons while regretting for loss of temper, accepting abnormal behaviour and assured that he will not repeat such behaviour.

10. Undisputedly, the Management did not annex the list of documents and witnesses proposed to be examined. In normal course of events, a fair opportunity is to be afforded to the delinquent furnishing copies of the documents proposed to be relied upon by the Manager and list of witnesses proposed to be examined. Even in the

explanation or before the enquiry officer, the delinquent petitioner did not make any request for supply of documents proposed to be relied on or for supply of list of witnesses proposed to be examined.

11. Taking advantage of non supply of list of documents and list of witnesses, the counsel for the petitioner, Sri J. Sudheer, contended that it is violation of principles of natural justice. The 3rd respondent after conducting necessary enquiry, called upon the petitioner to submit his written submission and accordingly by letter dated 11.02.1998 the defence representative submitted written submission and similarly the Management Representative, S. Sridhara Rao submitted a written submission by letter dated 12.02.1998. On considering the material on record including the written submissions, the 3rd respondent found the petitioner guilty of grave misconduct. While recording the findings, the enquiry officer relied on complaint dated 22.09.1998 of M/s. Aar Bee enterprises, Hyderabad and office note dated 23.09.1998 and letter dated 23.09.1998 addressed to the General Manager (personal) of Zonal Officer, Hyderabad and evidence of M.Ws.1 and 2, S.K. Sahay and K. Raghavendra Rao. In normal course of events, along with the charge sheet, list of documents proposed to be relied on by the Management have to be furnished so as to enable the employee to submit his written explanation for the charge memo and list of witnesses proposed to be examined on behalf of the Management. He failed to comply such requirement. It amounts to violation of principles of natural justice. Having maintained silence for a long period, till completion of enquiry, and on appeal against enquiry officer's report, the petitioner is not entitled to raise such plea for the first time in the writ petition.

12. The learned counsel for the respondents mainly contended that in the absence of any such condition for supply of documents proposed to be relied on by the Management and list of witnesses proposed to be examined by the Management, and in the absence of

any prejudice, the proceedings issued by the respondents cannot be set aside. Undoubtedly, the Memorandum of Settlement, dated 10.04.2002, referred above did not obligate the Management to supply copies of documents proposed to be relied on and list of witnesses. However, nothing prevented the petitioner to make request to inspect the documents or to supply the copies of list of documents.

13. In similar circumstances in **State of U.P. v. Shatrughan Lal**^[3] the Apex Court held that when a preliminary enquiry is conducted invariably behind the delinquent employee and it constitutes the whole basis of the charge-sheet. Before a person is called upon to submit his reply to the charge-sheet, he must on a request made by him in that behalf, be supplied the copies of the statements of witnesses recorded during the preliminary enquiry particularly if they are proposed to be examined at a departmental inquiry, and that a lapse in this regard would vitiate the departmental proceedings. Copies of the documents indicated in the charge-sheet to be relied upon as proof in support of articles of charges were also not supplied nor was any offer made to him to inspect those documents. If the disciplinary authority did not intend to give copies of the documents, it should have indicated in writing that he may inspect those documents.

14. In the facts of the above Judgment, it appears that there is a rule governing the departmental proceedings like CCCA rules. When there is a rule for supply of copies of documents or permitting inspection of documents, it has to be adhered to strictly by the disciplinary authority. Even in the facts of the above judgment, the Apex Court is of the clear view that on the request made by the employee for supply of copies of list of documents and witnesses etc., the disciplinary authority has to supply the documents and list of witnesses. In the present facts, the petitioner did not make any such request and no prejudice is brought to the notice of this Court. In the

absence of such prejudice and request for supply of the documents or for list of witnesses, it is not open to the petitioner to contend that the 3rd respondent or the disciplinary authority violated the principles of natural justice. Therefore, in the absence of any rule obligating the disciplinary authority to supply the documents in the bipartite settlement, dated 10.04.2002 and in the absence of any request made by the petitioner or his defence representative during enquiry for supply of copies of the documents or inspection of the documents proposed to be relied on by the Management, the contention of the petitioner cannot be upheld at this stage. Hence, on the ground of non supply of copies of the documents relied on by the management and failed to supply the list of witnesses to the petitioner before submitting his explanation for the charge sheet is not a ground to set aside the proceedings dated 10.08.1999.

15. A similar question came up before the Apex Court regarding the violation of principles of natural justice in **State Bank of Patiala v. S.K. Sharma** ^[4] the Apex Court held that when the respondent did not raise any objection during the enquiry that non-furnishing of the copies of the statements is disabling him or has disabled him from effectively cross-examining the witnesses or to defend himself and the enquiry officer has not found any prejudice has resulted from the said violation. But the High Court did not refer the aspect of prejudice at all. Therefore, in the absence of any prejudice that resulted to the respondent on account of non furnishing him, the copies of statement of witnesses, it cannot be said that the respondent did not have fair hearing or that the disciplinary inquiry against him was not fair enquiry. The Supreme Court further laid down certain guide lines in this regard.

16. Even if the principle laid down in the above judgment is applied, in the absence of proof of prejudice to the petitioner in the present facts and failure to raise such objection before the conclusion

of enquiry or before the appellate authority, the same cannot be held to be violation of principles of natural justice. On the said ground, the proceedings under challenge cannot be set aside.

17. One of the grounds urged before this Court is that the 3rd respondent did not appreciate the evidence in proper perspective and in the absence of examination of Sudhindra Kumar, proprietor of M/s.Aar Bee enterprises and the other person who was present along with him when the petitioner misconducted is fatal to the case and in the absence of any medical evidence, the charge regarding intoxicated condition of the petitioner at the time when M.Ws. 1 and Sudhindra Kumar entered into the Bank. No doubt the petitioner being armed guard posted at the entrance of the Bank, he is supposed to maintain high degree of discipline being retired armed personal. But the petitioner allegedly abused the representatives of M/s. Aar Bee enterprises at 2.30 P.M., it amounts to misbehaviour, if proved. He also allegedly kicked chairs when M.Ws. 1 and 2 came to the Branch to verify the facts based on the complaint of Sudhindra Kumar, Proprietor of M/s. Aar Bee enterprises, the reason for coming to conclusion that the petitioner was found inebriated condition is the oral evidence of M.Ws.1 and 2. No doubt M.Ws.1 and 2 testified that the petitioner was found in imbalanced state. Merely because he lost his mental balance and found indifferent behaviour, it is difficult to hold that the petitioner was in inebriated condition at the time of alleged incident at 2.30 p.m. and the other at 5.00 p.m. on the same day. Immediate step to be taken by the Management is to refer the petitioner for Medical examination to find out whether he was intoxicated or when his conduct was indifferent giving scope and suspected that he was in inebriated condition. No such steps were taken by the Management to find out whether the petitioner consumed liquor while on duty at the time of alleged incidents. On the basis of observation of the condition of the petitioner by M.Ws.1 and 2 it is highly difficult to hold that the petitioner was in inebriated condition.

18. According to clause 5 (c) of Memorandum of Settlement, drunkenness or riotous or disorderly or indecent behaviour on the premises of the Bank amounts to gross misconduct. When such gross misconduct was attributed to the employee i.e. drunkenness at the premises of the Bank it has to be proved by producing cogent and satisfactory evidence. But here except the observation by M.Ws. 1 and 2 that the petitioner was suspected to be in drunken condition, no other material was produced before the enquiry officer, but still the enquiry officer found the petitioner guilty for the misconduct under clause 5 (c) of the Memorandum of Settlement. Therefore, the fact finding of the 3rd respondent that the petitioner was found in inebriated or drunkenness condition is not based on any evidence.

19. The powers of the review by the High Court under Article 226 of the Constitution of India though limited, the Court can interfere if any finding is perverse and without any evidence. The standard of proof required in the departmental enquiry is not on par with the standard of proof in criminal case. But the misconduct can be proved by probabilities of the case. A similar question came up before the Apex Court in **High Court of Jurisdiction at Bombay v. Udaysingh** ^[5] wherein the Apex Court held that the respondent is a judicial officer and the maintenance of the discipline in the judicial service is a paramount matter and since the acceptability of the judgment depends upon the credibility, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, the imposition of penalty of dismissal from service is well justified. The Supreme Court further held that in a case of illegal gratification by Civil Judge from the defendant in civil suit for eviction can be proved based on preponderance of probabilities. Therefore the proof beyond reasonable doubt known as golden thread rule, mostly applied in criminal cases, cannot be applied to the departmental proceedings.

Even then in the absence of any evidence to accept that the petitioner is in inebriated condition, it is difficult to sustain the finding recorded by the 3rd respondent, for the charge under clause 5(e) of bipartite settlement dated 10.04.1999.

20. The power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/tribunal/ where conclusions are based on some evidence. The disciplinary authority is the sole judge of facts and the Court/ tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence.

21. The Supreme Court laid down certain guidelines in **B.C. Chaturvedi v. Union of India** [\[6\]](#).

“The judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/ Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with, whether the findings or conclusions are based on some evidence and whether the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/ tribunal. When the authority accepts the evidence and the conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has extensive power to re-appreciate the evidence and the nature of punishment. The Court/ Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/ Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry

or where the conclusion of finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding and mould the relief so as to make it appropriate to the facts of that case”

22. In view of the law declared by the Apex court and discussion of this Court regarding the finding the petitioner guilty for grave misconduct of consuming alcohol and misbehaving with the representatives of M/s.AarBee enterprises is not proved by the Management before the enquiry officer, but still based on the evidence of M.Ws. 1 and 2 found the petitioner guilty and the finding by the 3rd respondent – inquiry officer is without any evidence. Hence, the same is set aside.

23. The petitioner was found guilty on the ground that the petitioner misbehaving not only with Sudhindra Kumar, the proprietor of M/s.Aar Bee enterprises, but also with M.Ws.1 and 2. The specific misconduct attributed to the petitioner is that he abused M.W.1 in filthy language and Sudhindra Kumar, the proprietor of M/s. Aar Bee enterprises and described him as cheater, the same was witnessed by M.W.2 .

24. Undisputedly, the charge sheet was served called upon the petitioner to submit his explanation, accordingly, he submitted his explanation to the disciplinary authority in first paragraph of page 3 of the explanation received by the office on 30.11.1998. The petitioner admitted as follows:

“I genuinely regret for my loss of temper and show of abnormal behaviour. I assure you, sir, that will not repeat such behaviour”

25. In the third paragraph in the same page, the petitioner further expressed his regret, as follows:

“I once again submit my mis-behaviour was only an aberration and provoked by the false claim on the Bank and uncalled for remarks on me made by the representative of Battery Company.”

26. These two paragraphs directly amount to unequivocal admission of his misbehaviour with M.Ws.1 and 2. One of the contentions of the learned counsel for the petitioner is that when the respondents failed to prove the misconduct of the petitioner by adducing cogent and satisfactory evidence, before the 3rd respondent that the petitioner is guilty of misconduct, cannot be accepted, since, the evidence on record did not establish the guilt of petitioner's misconduct of the petitioner, even by applying of standard of proof required departmental proceedings.

27. On the other hand Sri Krishnam Raju, learned counsel for the respondent, placing reliance on the admissions extracted above in the explanation, contended that when the petitioner admitted his misbehaviour while regretting for loss of temper assuring that he will not repeat the same is sufficient to find him guilty for the misbehaviour. Even according to the memorandum of settlement dated 10.04.2002, when the petitioner admitted his misconduct, there is no need to proceed further to conduct a roving or general enquiry under clause 12 of the memorandum of settlement.

28. The admission of misbehaviour by the petitioner is unequivocal in his explanation, which I extracted earlier. In such case no further proof is required and no fact finding enquiry is required.

29. In **Addl. District Magistrate (City), Agra v. Prabhaker Chaturvedi** ^[7] the Apex Court held that admission of guilt by charged officer is sufficient to find him guilty for the misconduct. In the facts of the above judgment, the respondent was an employee in the office of the Additional District Magistrate (City), Agra, was dismissed from service for misappropriation of Rs.21,094.80 collected by him. The High Court set aside the order on the ground that he was not given adequate opportunity of defending himself as he was not permitted to examine witnesses nor was he supplied documents asked for by him.

But the Supreme Court advertent to the material on record concluded that the respondent himself by his statement dated 14.12.1984 admitted to have received Rs.21,000/- and odd, which could not be deposited by him on account of carelessness and fault, that it could not have been brought about by coercion and that the order sheet of the Inquiry Officer clearly shows that the respondent stated that he did not want to give any documentary or oral evidence and that the rejection of his request later to examine four more witnesses considering it as an after thought by the inquiry officer, was proper, Supreme Court held that the charge stood proved on the admission and that the imposition of penalty of dismissal was justified.

30. The present facts of the case are worse than the facts of the above judgment for the reason that the petitioner himself unequivocally made an admission about his misbehaviour assuring that he will not repeat the same. On the ground of admission itself, the petitioner's misconduct stood proved.

31. Even otherwise, though the petitioner admitted his misbehaviour in the explanation to the charge sheet, obviously the disciplinary proceedings were went on and examined witnesses to prove misconduct of the petitioner. M.W.1 S.K. Sahay is a Security Officer in Zonal Office, Hyderabad. In his evidence, he specifically stated that when he was called by E.P.D. Department, Zonal Office on 22.09.1998 at about 5.00 P.M., he went to Zonal Office and he was told by Deputy D.M. E.D.P. that the Armed Guard of Banjara Hills Branch has misbehaved with one of the vendors, who has supplied the batteries and UPS to the Branch. Immediately, he went to the Banjara Hills Branch and then he entered into the Branch office of the Bank, the Armed Guard was in civil dress and initially could not identify him and obstructed him to enter into the Branch, on furnishing proof of identity, the petitioner allowed M.W.1 to enter into the Branch, while he was enquiring about the incident, Mr. Raghavendra Rao, suddenly the

petitioner intervened and started abusing and speaking in Telugu which M.W.1 could not follow. From his behaviour, he felt that he might have taken some alcohol and as he was not able to stand straight, his speech was incoherent. Immediately he made an attempt to pacify the situation to find out the truth in the allegations, but the petitioner suddenly got violent and started throwing the chairs. He even told that nobody can do anything to him nor anything can be proved against him as he is on leave and has come for cash transaction.

32. In the cross- examination this fact was not rebutted by the defence representative. Similarly M.W.2 – K. Raghavendra Rao, Assistant Manager of the Banjara Hills Branch testified and unrebutted. He supported the evidence of M.W.1 on material aspects, more particularly, kicking chairs, abusing the proprietor of M/s. Aar Bee enterprises in Telugu language and the Security Officer etc. M.W.2 is the Telugu known person, who was not cross-examined even by putting any suggestion that the petitioner did not abuse him in filthy language. Therefore, his testimony remains unrebutted. When a particular attribution is made in the evidence of M.W.2 against the petitioner, unless he was cross-examined, denying the same or putting his case by way of suggestion his positive case to the witnesses, the unrebutted testimony of M.W.2 is to be accepted as true while appreciating the evidence. Therefore, the testimony of M.Ws.1 and 2 is sufficient to establish the guilt of the petitioner for misconduct. Though the learned counsel for the appellant, Mr. J.Sudheer, contended that based on such testimony of M.Ws.1 and 2, the 3rd respondent ought not have found the petitioner guilty as their evidence is inconsistent. Though it is not the duty of this Court, while exercising the power of review under Article 226 of the Constitution of India, there is satisfactory evidence on record to sustain the guilt of the petitioner i.e. misbehaviour.

33. The word "gross misconduct" is defined in clause 5 (c) of the memorandum of settlement, drunkenness or riotous or disorderly or indecent behavior on the premises of the Bank amounts to misconduct. According to clause 5(d) willful damage or attempt to cause damage to the property of the Bank or any of its customers amounts to misconduct.

34. In the present facts, the petitioner losing his temper, kicked the chairs and thrown some chairs while abusing Sudhindra Kumar in the Bank premises. No doubt the petitioner was in civil dress that means not wearing the armed guard dress. But according to the petitioner, he was not on duty and he came to the Bank only in connection with money transaction. Assuming for a moment that he was not on duty, the petitioner being an employee of the Bank is not supposed to behave in such high handed manner as he is supposed to maintain high degree of discipline than any other employee being an armed guard. His misbehavior outside the employment also amounts to misconduct. Misconduct in private life is a ground to initiate proceedings and take departmental action.

35. The rule of law is that where a person has entered into the position of servant, if he does anything incompatible with the due or faithful discharge of his duty to his master, the latter has a right to dismiss him. The relation of master and servant implies necessarily that the servant shall be in a position to perform his duty duly and faithfully, and if by his own act he prevents himself from doing so, the master may dismiss him. What circumstances will put a servant into the position of not being able to perform in a due manner his duties, or of not being able to perform his duty in faithful manner, it is impossible to enumerate. Innumerable circumstances have actually occurred which fall within that proposition, and innumerable other circumstances which never had yet occurred will occur, which also will fall within the proposition. But if a servant is guilty of such a crime

outside his service as to made it unsafe for master to keep him in his employment, the action may be taken against such servant by the master.

36. In the present case, the petitioner was an Armed guard supposed to sit at the entrance of the Bank and watch the persons entered into the Bank etc., and he is also supposed to control the public who misbehaved in the Bank, while discharging his duties maintain such high degree of discipline. He himself misbehaved that riotous behaviour though he was not on duty by the time of alleged incident, it amounts to misconduct in private life that too on the Bank premises itself. Even assuming for a moment that he was not on duty still he is liable for disciplinary action on account of his misbehaviour with the officials working in the Bank and entering into the Bank including the supplier of UPS etc.

37. Therefore, the facts proved before the 3rd respondent clearly established that the petitioner is the guilty of misconduct under clause 5(c) of Memorandum of settlement dated 10.04.2002. Therefore, this Court while exercising power of judicial review under Article 226 of the constitution of India cannot sit in appeal and decide the factual findings. But when the finding is not based on any evidence, the Court may interfere. Therefore, taking into consideration of all the facts and circumstances, I find that the finding of the 3rd respondent confirmed by the first respondent in the appeal committed an error in finding the petitioner guilty for consuming alcohol while on duty. But the finding with regard to riotous behaviour on the Bank premises which affects the Banking services linked with the customers rightly and the same is upheld.

38. Sri J. Sudheer, learned counsel for the petitioner, would contend that the punishment of removal is disproportionate to the gravity of misconduct and when it is shocking, the Court can interfere and set aside such punishment.

39. Whereas learned counsel for the respondent placing reliance on **Mahindra and Mahindra Limited's** case and on **Bydyabhushan Mohapatra's** case referred to supra contended that abusing the officer in filthy language is a grave misconduct and the punishment of removal is not disproportionate or shocking. In **Mahindra and Mahindra's** case referred to supra, the Supreme Court held that when the workmen used abusive language against the officers in front of superior, it amount to grave misconduct and the punishment of removal is not disproportionate. Further held that the discretion of interfering with the punishment can only be exercised in the following cases:

- 1) the punishment was disproportionate to the gravity of misconduct so as to disturb the conscience of the Court, or,
- 2) the existence of any mitigating circumstances which requires the reduction of the sentence, or,
- 3) the past conduct of the workman which may persuade the Labour Court to reduce the punishment

40. In the present case, the Bank is dealing with the customers and the first person who appear to the customers is the Armed guard posted at the entrance of the Bank. If he misbehaved with the customers certainly it will affect its business and reputation in the public and thereby there is possibility of reducing the business. Therefore, misconduct of the petitioner has direct effect on business of the Bank. As such the punishment imposed by the third respondent affirmed by the first respondent cannot be said to be disproportionate or shocking to the conscience of the Court.

41. In **Bydyanathan's** case referred to supra, the Apex Court held that

"The constitutional guarantee afforded to a public servant is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed, and that he shall not be dismissed or removed or reduced in rank until he has been given reasonable opportunity of showing cause against the action proposed

to be taken in regard to him. The reasonable opportunity contemplated has manifestly to be in accordance with the rules framed under Article 309 of Constitution. But the Court in a case in which an order of dismissal of a public servant is impugned, is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanor established. The reasons which induce the punishing authority, if there has been an enquiry consistent with the prescribed rules, are not justiciable: nor is the penalty open to the review by the Court. If the High Court is satisfied that if some but not all of the findings of the Tribunal were "unassailable" the order of the Governor on whose powers by the rules no restrictions in determining the appropriate punishment are placed was final, and the High Court had no jurisdiction to direct the Governor to review the penalty for as we have already observed the order of dismissal passed by a competent authority on a public servant, if the conditions of the constitutional protection have been complied with, is not justiciable. Therefore if the order may be supported on any finding as to substantial misdemeanor for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction to disturb the findings of the enquiry officer or the Tribunal when prima facie make out a case of misdemeanor, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice."

42. In view of the principles laid down in the above judgments and my discussion in the earlier paragraphs finding the petitioner guilty for the misconduct under clause 5(c) of memorandum of settlement dated 10.04.2003 is in accordance with rules and other attending circumstances considering the nature of business being carried on by the Bank.

43. Hence, I find no grounds to set aside the penalty imposed by the authorities of the 3rd respondent. Consequently, the writ petition is deserves to be dismissed.

44. In the result, the writ petition is dismissed. No costs.

45. Miscellaneous petitions, if any, pending in the writ petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Dt. 04-12-2015

BV

[\[1\]](#) (2005) 3 SCC 134

[\[2\]](#) AIR 1963 SC 779

[\[3\]](#) 1999(1) SLJ 213 (SC)

[\[4\]](#) AIR 1996 SC 1669

[\[5\]](#) 1997(4) SLR 690(SC)

[\[6\]](#) AIR 1996 SC 484

[\[7\]](#) AIR 1996 SC 2359