IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF

ANDHRA PRADESH

****

WRIT PETITION No.3546 OF 2005

Between:

P. Srinivas

.. Petitioner

and

Deputy General Manager-Appellate Authority,

Disciplinary Proceedings Cell,

State Bank of India, Zonal Office,

Visakhapatnam, and another.

.. Respondents

DATE OF JUDGMENT PRONOUNCEMENT : 12TH OCTOBER, 2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

1.	Whether Reporters of Local newspapersmay be allowed to see the judgment?	Yes/No
2.	Whether copies of the judgment may bemarked to Law Reporters/Journals	Yes/No
3.	Whether His Lordship wishes to see the fair copy of the judgment?	Yes/No

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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WRIT PETITION No.3546 OF 2005

O R D E R

The petitioner, an Assistant (Accounts & Cash) in the State Bank of India, at its Razole branch, was subjected to disciplinary proceedings and by order dated 18.08.2004, he was discharged from service with superannuation benefits and without disqualification for future employment. The said punishment was confirmed in appeal, by order dated 30.12.2004, by the Deputy General Manager-Appellate Authority of the State Bank of India, Visakhapatnam Zonal Office. These two orders are subjected to challenge in the present writ petition and a consequential direction is sought to the bank to reinstate the petitioner in service with all consequential benefits, including back wages.

The petitioner was, in effect, a Clerk-cum-Cashier in the service of the bank at its Razole Branch in East Godavari District. He was placed under suspension in September, 1997, in connection with certain irregularities allegedly committed by him, which also led to registration of Crime Nos.72 and 76 of 1997 against him and another employee of the bank. The petitioner was ultimately acquitted in appeal, insofar as the criminal proceedings are concerned. As he was convicted by the trial Court in the first instance, his services were summarily terminated but after his acquittal, he was reinstated in service on 05.03.2003. On the very same day, he was again kept under suspension and disciplinary proceedings were initiated. Show-cause notice dated 03.03.2003 was issued to him detailing two charges. These disciplinary proceedings culminated in his discharge from service under the impugned order dated 18.08.2004 which was confirmed in appeal on 30.12.2004.

The grounds of challenge raised by the petitioner in the affidavit filed in support of this writ petition are to the effect that he was victimized to shield higher officials who were also involved in the transaction. Various factual aspects of the matter were set out at great length by the petitioner in support of his contention that others were also involved.

It is a settled proposition of law that this Court would normally not sit in appeal over the decisions of disciplinary authorities. It is the decision making process which is subjected to judicial review and not the actual decision. One recognized exception to this principle is where a decision is utterly perverse on the face of it, being contrary to the evidence and the record. It is also well settled that the burden of proof required in criminal proceedings would not apply to disciplinary proceedings. Therefore, acquittal in criminal proceedings would not be sufficient, by itself, to infer the same conclusion in the disciplinary proceedings on the same or similar charges. Insofar as disciplinary proceedings are concerned, a preponderance of probabilities would be sufficient to hold against an employee and proof beyond reasonable doubt, required in criminal proceedings, would not be insisted upon.

The first charge leveled against the petitioner was that he had prepared in his own writing a withdrawal form in respect of the dormant account of an illiterate customer for Rs.19,000/- and presented the same without a passbook. The petitioner was also alleged to have issued a token under his own initials and posted the debit voucher in the ledger. All this was allegedly done by him though he was not entrusted with the savings bank account seat but was working in the accounts section. The claim of the petitioner was that it was the duty of the passing official, one V.V.Raghava Rao, to verify the thumb impression on the withdrawal form and then forward it to the payment cashier who then had to verify the photo of the customer on the passbook before paying the money. According to him, his role in this transaction was limited to forwarding the withdrawal form along with the ledger to the passing official but he alone was isolated for the entire transaction and victimized to shield the other officials. He pointed out that the passing official was reinstated in service after a disciplinary enquiry but he was subjected to discharge from service. He also referred to the fact that V.V.Raghava Rao, the passing official, paid the amount of Rs.19,000/- covered by this withdrawal form.

The bank authorities had however found that the petitioner had no evidence to prove that he was asked to attend to the savings bank account counter. Further, it was an admitted fact that the petitioner posted the entry in the ledger in his own handwriting and issued the token. The account in question was dormant but the petitioner received the withdrawal form without a pass book.

Insofar as the second charge is concerned, the petitioner was alleged to have forged the signatures of payees of three banker's cheques and furnished false addresses of such payees on the reverse of the cheques. The petitioner claimed that he had been acquitted of this very charge in the criminal proceedings and therefore, no liability could be attached to him in the disciplinary proceedings. He further adverted to certain observations made by the criminal Court as to the involvement of a third party and contended that the same clearly absolved him of the charge. The acquittal of the petitioner by the competent criminal Court was on the ground that the prosecution had failed to prove his guilt beyond reasonable doubt. As pointed out earlier, the burden of proof required in criminal proceedings is far higher as in disciplinary proceedings, what is required is a preponderance of probabilities being established. Apart from the alleged forgery, it was also established that the petitioner furnished false addresses of the payees on the reverse of the banker's cheques. These, then, were the factual findings which weighed against the petitioner.

The thrust of the arguments advanced by Sri N.Vijay, learned counsel for the petitioner, is not to the effect that the petitioner was not involved in the irregularities alleged under the two charges. His endeavour was to establish that others were also involved but they were let off the hook with a lesser punishment while the petitioner alone was victimized with discharge from service.

In its counter, the bank, speaking through its Assistant General Manager (Region-IV), Zonal Office, Visakhapatnam, stated that the petitioner had undertaken actions which were not even entrusted to him and facilitated a fraud. As regards his acquittal by the competent criminal Court, it was stated that the same was based on technicalities and that the bank was at liberty to initiate disciplinary proceedings independently to regulate the conduct of its employees. Reference was made to the difference between criminal proceedings and departmental proceedings in the context of the required burden of proof and it was pointed out that the guilt of the petitioner need not be proved beyond reasonable doubt as in a criminal case to impose punishment upon him. The bank stated that the due procedure had been followed while initiating disciplinary action against the petitioner. As regards the allegation of the petitioner that V.V.Raghava Rao, the passing official, had been let off lightly, it was stated that he had been charged with negligence and was visited with the punishment of cash recoveries and also reduction to a lower stage in his scale of pay by two stages for two years with cumulative effect with a further direction that he would not earn increments during such period and upon expiry of such period, the reduction would have the effect of postponing his future increments. It was further stated that. owning up moral responsibility for the losses suffered by the bank, V.V.Raghava Rao, the passing official, made good the amount of loss voluntarily. The distinction between the charges leveled against both these employees was pointed out and the bank asserted that the petitioner had not been victimized.

Now a look at relevant case law:

In ***LALIT POPLI V/s. CANARA BANK***, it was pointed out by the Supreme Court that the standard of proof, the mode of enquiry and the rules governing an enquiry are conceptually different from those applicable to criminal proceedings. The Supreme Court further pointed out that once a bank employee accepted some lapse on his part, mere denial of lack of criminal intent would not be enough, as such an employee deals with public monies and the very nature of his work demanded vigilance with the inbuilt requirement to act carefully and any carelessness inevitably invited action.

TATA ENGINEERING & LOCOMOTIVE CO. LTD. V/s. JITENDRA PD. SINGH, cited by Sri N.Vijay, learned counsel, is wholly irrelevant as that was a case where identical charges were leveled against three employees but only one of them was singled out for higher punishment. The facts of the case on hand are materially different as the charge leveled against V.V.Raghava Rao, the passing official, was completely different from the charge leveled against the petitioner.

Similar is the case with ***RAJENDRA YADAV V/s. STATE OF MADHYA PRADESH***, as that was also a decision which turned on facts and the Supreme Court held that the doctrine of equality would apply to all who were equally placed, including those who were found guilty. As already stated, V.V.Raghava Rao and the petitioner did not stand on the same footing and therefore, no parity could be claimed by the petitioner as regards the punishment imposed upon them.

STATE OF UTTAR PRADESH V/s. RAJ PAL SINGH is also distinguishable on facts as different punishments were imposed in that case for identical charges.

In ***SHER BAHADUR V/s. UNION OF INDIA,*** it was held that evidence must link the charged officer with his alleged misconduct or else it would be no evidence in law. In the present case, sufficient evidence was found established by the departmental authorities linking the petitioner with the irregularities alleged against him. This judgment therefore does not further the case of the petitioner.

In ***NARINDER MOHAN ARYA V/s. UNITED INDIA INSURANCE CO. LTD***., the Supreme Court observed that while exercising the power of judicial review, the Court should apply its mind as to whether sufficient material had been brought on record to sustain the findings. However, once such material is found, it is not for the Court to weigh the adequacy thereof or come to a different conclusion by analyzing the same. This judgment is therefore of no avail to the petitioner.

In ***STATE OF ANDHRA PRADESH V/s. S.SREE RAMA RAO***, the Supreme Court observed that the High Court, under Article 226 of the Constitution, is not a Court of appeal over the decision of the authorities holding a departmental enquiry and its only concern is to determine whether the enquiry was held by an authority competent to do so and as per the procedure prescribed in that behalf, so as to ensure that the rules of natural justice are not violated. If there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, the Supreme Court held that it is not the function of the High Court to review such independent finding. It is only if the High Court finds that the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules or where the authorities have disabled themselves from reaching a fair decision by considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion, the Supreme Court opined that the High Court would be justified in interfering. However, the Supreme Court cautioned that if the departmental authorities held the enquiry properly and, being the sole judges of facts, if they found some legal evidence on which findings could be based, the adequacy or reliability of such evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition.

The same principle was reiterated thereafter by the Supreme Court in ***STATE OF MADRAS V/s. G.SUNDARAM*** and ***STATE OF ANDHRA PRADESH V/s. CHITRA VENKATA RAO***.

In ***B.C.CHATURVEDI V/s. UNION OF INDIA***, the Supreme Court observed:

> '12. 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, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a 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. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as an appellate authority to re-appreciate 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 or 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 each case.'

As regards proportionality of the punishment, in ***RANJIT THAKUR V/s. UNION OF INDIA***, the Supreme Court observed that judicial review, generally speaking, is directed not against the decision but against the 'decision-making process' and the question of the choice of the quantum of punishment should suit the offence and the offender but should not be vindictive or unduly harsh. The Supreme Court further observed that it should not be so disproportionate to the offence as to shock the conscience and amount, in itself, to conclusive evidence of bias.

Though Sri N.Vijay, learned counsel for the petitioner, would request this Court to go into various factual aspects of the matter, this Court is not inclined to undertake such an enquiry as if it were sitting in appeal over the decision of the disciplinary authorities. Pertinent to note, it is not the case of the petitioner that there was any perversity in the findings. No such ground has been taken in the affidavit filed in support of the writ petition. As pointed out by the Supreme Court, once there is some evidence on the basis of which the departmental authorities could have recorded a finding against the delinquent officer, it is not for this Court to weigh the adequacy of such evidence and come to a different conclusion. That apart, even on facts, the admitted involvement of the petitioner in the acceptance of the withdrawal form without a passbook and issuing the token and in writing wrong addresses of the payees on the back of the banker's cheques is sufficient to hold that the charges leveled against him were made out.

A bank employee owes a fiduciary obligation to his employer to safeguard its reputation and protect its customers' monies. The admitted fact is that the petitioner, while dealing with a dormant account, received a withdrawal form without a passbook and issued a token when it was not even his job to deal with the same. This, by itself, was enough to infer failure on the part of the petitioner to live up to his fiduciary obligation to the bank and its customers. This Court therefore does not find any reason to interfere with the punishment imposed upon the petitioner on the ground of proportionality. In fact, the petitioner seems to have been let off lightly as he was only discharged from service and was given all his superannuation benefits apart from not disqualifying him for future employment.

After conclusions of the arguments, the petitioner filed an affidavit along with a brief note seeking to raise a new issue to the effect that the procedure for conducting disciplinary proceedings against the Bank's clerical staff was not followed in this case. However, no such ground was taken in the affidavit filed in support of the writ petition. It is therefore not open to the petitioner to raise this new ground at the eleventh hour without even putting the bank on notice. This ground is therefore eschewed from consideration. The case law filed along with the brief note and the additional affidavit in support of this new ground is also eschewed from consideration.

On the above analysis, this Court finds no grounds made out to interfere with the punishment imposed upon the petitioner by the disciplinary authority which was confirmed in appeal.

The writ petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

12TH OCTOBER, 2015

PGS