HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

Writ Petition No. 24013 of 2003

ORDER :

This writ petition is filed to direct the respondents to continue the petitioner into service by suspending the impugned order No.DPS/R-V/932, dated 03.02.2003 passed by the 2nd respondent and confirmed in appeal by the 1st respondent.

2. It is the case of the petitioner that while he was working with the respondent Bank as Officer JMG I (Cash), State Bank of India, Vinukonda, he was placed under suspension on 03.08.2001 based on certain irregularities committed by him. Subsequently charge memo dated 02.07.2002 is issued to the petitioner alleging certain irregularities, for which, he submitted explanation on 18.07.2002 denying the charges leveled against him. Basing on the Enquiry Report dated 13.09.2002, he was issued proceedings dated 03.02.2003 by the 3rd respondent communicating the order of Disciplinary Authority-2nd respondent dated 30.01.2003 dismissing the petitioner from service. Aggrieved by the said order, the petitioner preferred appeal before the Appellate Authority-4th respondent, but without considering the grounds raised therein by the petitioner, the said appeal was rejected confirming the order of dismissal passed by the 2nd respondent. Aggrieved by the same, the present writ petition is filed.

3. Counter affidavit is filed by the 4th respondent on his behalf and also on behalf of other respondents denying the averments in the affidavit filed in support of the writ petition stating that the petitioner committed serious irregularities in maintaining Currency Chest; appraising gold loans; conducting financial transactions while working as Asst. Manager (Cash) at Vinukonda Branch during September, 1999 to August, 2001. He was issued charge sheet dated 02.07.2002 and he filed explanation to the same on 18.07.2002. After conducting a domestic enquiry against the petitioner giving him due and reasonable opportunity, punishment of dismissal from service was imposed on him, as against which, the petitioner preferred an Appeal as provided under the

State Bank of India Officers' Service Rules and the said Appeal was duly considered by the Appellate Authority and an elaborate speaking order was passed dismissing the said Appeal. Though the petitioner was suspended on 04.08.2001 by the Disciplinary Authority in view of the seriousness of the charges leveled against him, he had not challenged his suspension and sought for dismissal of the writ petition.

4. Heard Sri Kowturu Vinaya Kumar, learned counsel for the petitioner and Smt. V.Uma Devi, learned Standing Counsel for the respondents.

5. Sri Kowturu Vinaya Kumar, learned counsel for the petitioner submits that though the petitioner has denied the charges in pursuant to the charge sheet dated 02.07.2002, as the respondent authorities assured him that if he admits the guilt in the enquiry proceedings, a lenient view will be taken. Believing the assurance given by the respondent authorities, petitioner had no other go except admitting the guilt before the Enquiry Officer and basing on such admissions, enquiry Officer submitted his report stating that the charges leveled against petitioner are proved. Basing on the report of the Enquiry Officer, the Disciplinary Authority, without considering the explanation of the petitioner dated 18.07.2002 to the Charge Sheet, passed the impugned order of dismissal of the petitioner from service on 03.02.2003. He would further contend that the petitioner made representation dated 21.10.2002 against the enquiry report submitted by the Enquiry Officer. But without considering the representation filed by the petitioner, the Disciplinary Authority imposed the impugned punishment. Though the petitioner filed appeal before the Appellate Authority on 27.02.2003, without considering the pleas taken by the petitioner, the Appellate Authority by proceedings dated 17.10.2003, confirmed the punishment imposed by the Disciplinary Authority. He would further submit that the petitioner belongs to Schedule Tribe and he has rendered almost 24 years of service and that he also earned promotion being appointed from the lower rank i.e., Clerk-cum-Cashier to the present Officer Cadre. He also submits that there is no loss caused to the respondent Bank and that the extreme punishment of dismissal from service is shockingly disproportionate to the charges leveled against him. He also submits that the Appellate Authority has not considered the issue in proper perspective and has not given any cogent reasons while upholding the order of dismissal by the Disciplinary Authority,

without considering the grounds raised by the petitioner in proper perspective. In support of his contention, he relied on the judgment reported in **Chairman cum Managing Director, Coal India Limited and another v. Mukul Kumar Choudhuri and others.**

6. On the other hand, Smt. V.Uma Devi, learned Standing Counsel appearing for the respondent Bank submits that serious charges are leveled against the petitioner. She further submits that after conducting detailed enquiry by following the principles of natural justice, as the petitioner himself had admitted the guilt, the Enquiry Officer submitted report stating that the charges leveled against the petitioner are proved. The Disciplinary Authority after considering the report of the Enquiry Officer, imposed the punishment of removal of the petitioner from service and the same was also confirmed by the Appellate Authority by an elaborate order, as such, the same cannot be faulted. She would further contend that since the charges are grave in nature and respondent Bank has sustained loss, the punishment imposed on the petitioner is justified and the same cannot be interfered with by exercising the power of judicial review under Article 226 of the Constitution of India. She would further contend that as the charges leveled against the petitioner are grave in nature, no lenient view can be taken against the petitioner. In support of her contention, she relied on the judgment reported in **Disciplinary Authority-cum-Regional Manager and others v. Nikunja Bihari Patnaik, Union Bank of India v. Vishwa Mohan and B.C.Chaturvedi v. Union of India and others.**

7. I have given my earnest consideration to the arguments advanced on either side and also perused the material available on record. The following are the charges framed against the petitioner:

"I. You had misappropriated an amount of Rs.10,000/- by depositing into the Currency Chest a note packet of Rs.500/- denomination containing 80 pieces only.

II. You were negligent in reporting the Currency Transfer figures to the Funds Settlement Link Office. Your negligence in this regard had resulted in the Bank paying Rs.79,500/- to Reserve Bank of India towards the delay in settling funds of Currency Transfer transactions.

III. You had fraudulently appraised a gold loan, in the name of your son, against pledge of spurious gold ornaments. You had thus passed on pecuniary benefit to your son.

IV. You had neither brought to the notice of the sanctioning authority nor obtained permission of the competent authority while processing gold loans in the name of your close relatives.

V. You had placed yourself in pecuniary obligation to Vijaya Bank without obtaining approval from the competent authority, in violation of Rule No.59(i) of the State Bank of India Officers Service Rules, by which you are governed.

VI. You had indulged in activities which are unbecoming of a Bank official.

VII. You had issued and caused negotiation of several cheques drawn on your account without keeping sufficient balance in the relative account in violation of Rule No.60(2) of the State Bank of India Officers Service Rules. The cheques so issued by you were returned unpaid on presentation.

8. In response to the above Charge Sheet, petitioner submitted explanation on 18.07.2002 denying the charges leveled against him. Though the petitioner has denied and explained each charge, but he admitted guilt before Enquiry Officer. It is the case of the petitioner that officials of respondent Bank assured him that if he admits the guilt before the Enquiry Officer, enquiry will be hastened and a lenient view will be taken. Under that fond hope and impression, the petitioner had admitted guilt before the Enquiry Officer. However, basing on the said admissions, the Enquiry Officer has rendered his findings and held that all the charges leveled against him are proved. Even in the representation of the petitioner against the report of the Enquiry Officer before the Disciplinary Authority, he once again reiterated his stand as taken in his explanation dated 18.07.2002 to the charge sheet. However, the Disciplinary Authority has not dealt with the issue in proper perspective and imposed major punishment of dismissal from service. It is pertinent to note that the petitioner in his representation dated 21.10.2002 has confessed his mistakes and requested the respondent Bank to consider his case sympathetically and that he is unable to maintain his family as he was under suspension. However, the Disciplinary Authority without properly considering his explanation imposed extreme

punishment of dismissal from service. The petitioner has also raised similar grounds before the Appellate Authority stating that under *bonafide* impression that the management will take lenient view and hasten the enquiry, if he admits his guilt. But such pleas have not been considered by the Appellate Authority.

9 . No doubt, a perusal of the charges framed against the petitioner would unmistakably indicate that they relate to misconduct of a serious nature and the petitioner himself admitted before the Enquiry Officer. It also goes without saying that the petitioner has explained in respect of each charge and that loans obtained from his family members were cleared off even before the dismissal proceedings are initiated. But neither the Disciplinary Authority nor the Appellate Authority thought it fit to consider the said plea and in a routine manner rejected said plea. Since the petitioner himself admitted his guilt, this Court cannot go into that aspect now.

In **B.C.Chaturvedi v. Union of India and others (supra),** the Hon'ble Supreme Court held as follows:

> "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 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 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.
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> 13. The disciplinary authority is the sole judge of facts. Where appeal is presented. The appellate authority has co- extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence

and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 781], this Court held at page 728 that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

In **Chairman cum Managing Director, Coal India Limited and another v. Mukul Kumar Choudhuri and others(supra),** the Hon'ble Supreme Court held as follows:

"17. In the case of State of Andhra Pradesh and Others v. Chitra Venkata Rao1, this Court considered the scope of judicial review in dealing with departmental enquiries and held:

"21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao (AIR 1963 SC 1723). First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where 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, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where 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 prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some 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 on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

22. ....

23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is

shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See Syed Yakoob v. K.S. Radhakrishnan (AIR 1964 SC 477).

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do."

In view of the law laid down by the Hon'ble Supreme Court, this Court cannot go into that aspect and interfere with the findings of the fact arrived at by the competent authorities. But as far as the contention pleaded by the learned counsel for the petitioner in respect of proportionality in the aforesaid decision, it is held as follows:

"25……..

"28. Applying the doctrine of proportionality and following CCSU, Venkatachaliah, J. (as His Lordship then was) observed: (SCC p. 620, para 25)

"The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review." (emphasis supplied)

26. The doctrine of proportionality is, thus, well recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole

> power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in access to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review. One of the tests to be applied while dealing with the question of quantum of punishment would be : would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment. In a case like the present one where the misconduct of the delinquent was unauthorized absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desired to disobey the order of higher authority or violate any of the Company's Rules and Regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations. Ordinarily, we would have sent the matter back to the appropriate authority for reconsideration on the question of punishment but in the facts and circumstances of the present case, this exercise may not be proper. In our view, the demand of justice would be met if the Respondent No. 1 is denied back wages for the entire period by way of punishment for the proved misconduct of unauthorized absence for six months."

The facts in the above case before the Hon'ble Supreme Court are similar to the facts and circumstances in the present case on hand. In the instant case, the petitioner filed explanation to the charge sheet dated 02.07.2002 and explained in respect of each charge and ultimately admitted his guilt. Even in the judgment before the Hon'ble Supreme Court, the delinquent Officer also admitted the guilt. In those circumstances, the Hon'ble Apex Court ordered reinstatement of the appellant therein. The charge against the delinquent Officer in the above said judgment before the Hon'ble Supreme Court is that the delinquent Officer was absent unauthorizedly and he explained the reasons therein for such unauthorized absence, but in the present case, serious charges are leveled against the petitioner. Therefore, petitioner cannot be granted relief of reinstatement. However, the judgments cannot be read as statutes. One word makes all the difference. Each case depends upon its own facts and circumstances. In view of the same, I am of the opinion that explanation of the petitioner to the charge memo goes to show that the petitioner is negligent in performing his duties.

However, in view of the law laid down by the Hon'ble Supreme Court in the aforesaid decision with regard to the doctrine of proportionality, the punishment of dismissal of the petitioner from service is harsh, though it is alleged by the respondent Bank that the petitioner has committed act of misappropriation. Since the order of dismissal was passed in the year 2003, by applying the doctrine of proportionality, in the facts and circumstances, considering the back ground of the petitioner and service rendered by him in the respondent Bank, I feel that punishment of dismissal from service is harsh and accordingly, the punishment of dismissal is modified to one of removal from service.

12. Learned Standing Counsel for the respondent Bank had placed her reliance in the judgment reported in **Disciplinary Authority-cum-Regional Manager and others v. Nikunja Bihari Patnaik (supra),** wherein the Hon'ble Supreme Court considered the case pertaining to whether the Bank loans sanctioned by the respondent therein acting beyond his authority became sticky and irrecoverable. In those circumstances, the Hon'ble Supreme Court held that the punishment imposed on the respondent by the Bank authorities cannot be reduced and allowed the appeal.

13. In **Union Bank of India v. Vishwa Mohan (supra)** the Hon'ble Supreme Court considered the case of non-supply of enquiry authority's report/findings to the delinquent officer and after an enquiry, the Disciplinary Authority therein found that the charges leveled against the delinquent officer are proved. While allowing the appeal filed by the Bank, the Hon'ble Supreme Court held as follows:

> "11. After hearing the rival contentions, we are of the firm view that all the four charge sheets which were inquired into relate to serious misconduct. The respondent was unable to demonstrate before us how prejudice was caused to him due to non supply of the Inquiry Authority's report/findings in the present case. It needs to be emphasised that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this is not observed, the confidence of the public/depositors would be impaired. It is for this reason, we are of the opinion that the High Court had committed an error while setting aside the order of dismissal of the respondent on the ground of prejudice on account of non furnishing of the inquiry report/findings to him."

In the instant case on hand, the facts are otherwise. Serious charges have been leveled against the petitioner and moreover, the same have been admitted by the petitioner himself. The aforesaid judgment was delivered in different context. Moreover, in the present case, I am not inclined to order reinstatement of the petitioner except modifying the punishment imposed by the Disciplinary Authority of 'dismissal from service' into 'removal from service'.

14. In **B.C.Chaturvedi v. Union of India and others (supra),** the Hon'ble Supreme Court held as follows:

> "18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. It the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases. impose appropriate punishment with cogent reasons in support thereof."

At this point of time, no useful purpose will be served if the matter is remanded and also, to shorten the litigation, I am inclined to modify the punishment. However, in view of the law laid down by the Hon'ble Supreme Court in **Chairman cum Managing Director, Coal India Limited and another v. Mukul Kumar Choudhuri and others(supra)** with regard to the doctrine of proportionality, considering the service rendered by the petitioner to the Bank and also considering his financial status, I am of the view that the punishment of dismissal of the petitioner from service is harsh. Since the order of dismissal was passed in the year 2003, by applying the doctrine of proportionality, in the facts and circumstances, considering the back ground of the petitioner and service rendered by him in the respondent Bank, I feel that the punishment of dismissal is to be modified to one of removal from service.

Accordingly, the Writ Petition is allowed in part to the extent indicated above. There shall be no order as to costs. As a sequel thereto, miscellaneous applications, if any pending in this Writ Petition, shall stand closed.

_______________________________ **A.RAJASHEKER REDDY, J**

14.10.2015.

KVS

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

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