

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 7079 of 2004

Pronounced On : 07.04.2015

V. K. Khullar

.... Petitioner

vs.

Oriental Bank of Commerce and others .... Respondents

**CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.**

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*To be referred to Reporters or not ?*

*Whether the judgment should be reported in the digest ?*

\* \* \*

Present : Mr. D. S. Patwalia, Senior Advocate  
with Mr. Salil Sablok, Advocate  
for the petitioner.

Mr. Jagat Arora, Advocate  
and Mr. R. N. Lohan, Advocate  
for the respondents.

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**DEEPAK SIBAL, J. :**

Through the present writ petition, the petitioner seeks quashing of the order dated 27.06.2003 (Annexure P-6), through which he has been ordered to be removed from service of the respondent – Oriental Bank of Commerce (hereinafter referred to as – the Bank). The petitioner further prays for quashing of the order dated 17.11.2003 (Annexure P-8), through which the appeal filed by the petitioner, challenging the order of his

removal from service, has been rejected by the Appellate Authority.

The facts in brevity, emerging from the record as also from the arguments raised at the Bar, are that while the petitioner was serving as a Chief Manager in the Khanna Branch of the respondent Bank, for acts of omission and commission on his part, he was served with a charge-sheet dated 31.01.2002. The reply filed by the petitioner, having been found to be unsatisfactory, he was subjected to a regular departmental inquiry, in which he was found guilty of all the charges levelled against him. A copy of the inquiry report was made available to the petitioner for his response to the findings recorded therein, but the petitioner failed to respond to the same. On the basis of the inquiry report, the disciplinary Authority inflicted upon the petitioner the punishment of removal from service, which would not be a disqualification for future employment. The appeal filed by the petitioner against the aforesaid order of removal from service was considered and rejected by the Appellate Authority through order dated 17.11.2003, which was conveyed to the petitioner through covering letter dated 18.11.2003. Aggrieved by the above, the petitioner has approached this Court through the present writ petition.

I have heard learned counsel for the parties and with their able assistance, have also perused the record of the case.

Mr. D. S. Patwalia, learned senior counsel appearing on behalf of the petitioner has submitted that before imposition of the extreme penalty

of removal from service, no show cause notice was issued to the petitioner. He has further submitted that the over-draft facilities to M/s Overseas Cables Ltd. (hereinafter referred to as – the Company), beyond the sanctioned amounts, were permitted by the petitioner and though for the same, as required, no prior sanction was taken by him, but through different letters (attached with the petition), intimation of the same was duly sent by the petitioner to the competent Authority. On this account, learned senior counsel wished to project bona fides on the part of the petitioner. It was further submitted that the acts of omission and commission on the part of the petitioner have not resulted in any embezzlement or misappropriation on his part and had further not caused any loss to the Bank. On the strength of the above submissions, it was pleaded that at the most, the petitioner could be held guilty of a procedural lapse and for this, he did not deserve the extreme punishment of removal from service.

Discrimination was another ground, which was raised. It was submitted that there were several officers, who had been charge-sheeted with the petitioner, but all of them had not been given the same punishment, as the petitioner.

In support of his submissions, Mr. Patwalia relied upon the following judgments of the Apex Court :-

1. **Kailash Nath Gupta v. Enquiry Officer, (R. K. Rai), Allahabad Bank and others** reported as **JT 2003 (3) SC 322** and

2. **Dev Singh v. Punjab Tourism Development Corporation Ltd.**  
**and another** reported as **JT 2003 (7) SC 509.**

Responding to the submissions made on behalf of the petitioner, Mr. Jagat Arora, learned counsel appearing for the respondent Bank, submitted that the accounts of the Company, which had been shown favours by the petitioner beyond the Rules and Regulations of the respondent Bank, had become Non-Performing Asset (NPA) for the respondent Bank and a suit for recovery of Rs.8,77,44,000/- had been filed by the Bank against the Company. However, he very fairly submitted that the above losses could not directly be related to the acts of omission and commission on part of the petitioner. It was further submitted that the intimations, which the petitioner says that he had sent to the competent Authority, with regard to the irregular transactions permitted by him qua the Company, were not enough to absolve him of the lapses on his part as according to the applicable instructions of the respondent Bank, the transactions permitted by the petitioner on his own, could have been permitted only after prior approval from the competent Authority, which admittedly had not been obtained. It was still further submitted that the letters referred by the petitioner, wherein he says that he had intimated the competent Authority with regard to the transactions permitted by him qua the Company, for overdrawing more money from the Bank than sanctioned, were never produced by the petitioner before the Inquiry Officer, the

disciplinary Authority or the Appellate Authority. That being so, it was submitted that it was too late in the day for him to produce these letters, for the first time, before this Court.

It was further submitted by Mr. Arora that the petitioner had indulged in various acts of omission and commission, which were in proven violation of the instructions of the Bank and that he had shown undue favours to the Company. It was still further submitted that the petitioner was granted full opportunity to defend himself during the inquiry, wherein all the charges against him stood proved. Even after receiving the inquiry report, a copy thereof was supplied to the petitioner for him to file his response thereto, but no response to the same was filed. Even the Appellate Authority had considered the case of the petitioner and rejected the same. Mr. Arora relied upon the following judgments of the Apex Court in support of the submissions made by him :-

1. **Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik** reported as **1996 (9) SCC 69** ;
2. **Chairman & Managing Director, United Commercial Bank & Ors. v. P. C. Kakkar** reported as **2003 (4) SCC 364** and
3. **Life Insurance Corporation of India and others v. S. Vasanthi** reported as **(2014) 9 Supreme Court Cases 315**.

There is virtually no dispute between the parties to the present lis that the petitioner had permitted the over-drafting facility to the

Company, which was beyond their sanctioned limit and that for such permission, he had not taken prior approval of the competent Authority, as was required. The inquiry conducted against the petitioner had proved that the Cash Credit (HYP) figure in the case of the Company was found to be Rs. 301.57 lacs against the sanctioned limit of Rs. 171 lacs. It was also found that this was done by the petitioner on his own without any sanction from the competent Authority, as required. The Cash Credit (Book Debt) limits were also found enhanced by lacs of rupees. This favour to the Company had also been shown by the petitioner unauthorizedly at his own level. The above limits had been allowed to be crossed by the petitioner not in one but a series of transactions, spread over a period of over two years, which showed regular over-accommodation to the Company by the petitioner.

The charge that the petitioner failed to ensure that the entire sale proceeds of the Company are routed through the Cash Credit Account maintained at the Branch of the Company was also proved against him. The regular inquiry had found that the petitioner had been issuing letters of credits in the account of the Company unauthorizedly without getting the overdrawn position regularized. It was further proved in the inquiry that the petitioner had unauthorizedly allowed clean overdrafts in not only the accounts of the Company but also in the accounts of its various sister/allied concerns and this fact had been concealed by the petitioner from the

Regional Office while seeking confirmation of such action. Still further, the regular inquiry revealed that the petitioner had also unauthorizedly purchased cheques of accommodating nature in the accounts of the Company drawn by its sister/allied concerns in the accounts maintained by them in another Branch of the respondent Bank. The acts on the part of the petitioner of showing undue favours to the Company and its sister concerns were through a series of procedurally irregular transactions spread over a period of two years i.e. from 04.05.1998 to 09.05.2000.

It was in view of the above proved facts that the petitioner was ordered to be removed from service and his appeal against the order of removal was also dismissed.

No procedural irregularity in the conduct of the inquiry has been pointed out.

The submissions raised on behalf of the petitioner, that the above acts of omission or commission on his part had not caused any loss to the Bank, cannot absolve him as through the above acts on his part, he had certainly put the Bank to risk. As an official of the Bank, he is not entitled to indulge in such adventurism. Public Sector Banks like the respondent Bank are custodians of public money and such deviations from following the prescribed procedures by persons managing such public money cannot be tolerated. A high level of integrity and sincerity is expected from a bank officer like the petitioner.

The submission made on behalf of the petitioner that before the imposition of the penalty, he had not been issued any show cause notice is a submission, which needs to be considered only to be rejected. The record reveals that through letter dated 28.03.2003, the petitioner was served with a copy of the inquiry report and was granted opportunity to respond to the same within a stipulated period. It is admitted by the petitioner that in spite of the opportunity so granted, no response to the inquiry report was ever made by him, and that he also did not seek any extension of time to do so. In such a situation, the petitioner cannot complain of any prejudice caused to him on that count. Further, no rule, regulation or instruction has been even shown to me, to have been violated by the respondent Bank while imposing the punishment on the petitioner in the above manner.

Writing of letters by the petitioner to the competent Authority, informing them about his dealings with the Company also cannot come to the rescue of the petitioner as these letters were not produced before the Inquiry Officer, disciplinary Authority or the Appellate Authority. A perusal of the above referred letters also show that these are not with regard to all the charges levelled and proved against the petitioner and cover only a few transactions. Even otherwise, these letters cannot absolve the petitioner of his misconduct because as per the applicable instructions of the respondent Bank, prior permission was required to be taken from the competent

Authority, which admittedly was not done.

The plea of discrimination sought to be raised on behalf of the petitioner also deserves to be rejected. All the employees of the Bank qua which the petitioner alleges discrimination were proceeded against for their own individual acts of misconduct and dealt with accordingly. No similarity qua their cases vis-a-vis the petitioner's case was even shown.

The judgments of the Apex Court in **Kailash Nath Gupta's** case (*supra*), as also **Dev Singh's** case (*supra*) cited on behalf of the petitioner, while projecting that the punishment meted out to the petitioner was disproportionate and needed re-consideration, do not help the petitioner, as in my opinion, the punishment given to the petitioner does not shock my conscience. The charges proved against the petitioner show a series of unauthorized transactions, spreading over a period of over two years, through which the petitioner had consistently doled out favours not only to the Company, but also to its sister/allied firms and concerns. A perusal of the inquiry report, as discussed earlier, shows that the petitioner went to great lengths to favour the Company and its sister concerns.

The above view taken by me finds support from the judgment of the Apex Court in the case of **Disciplinary Authority-cum-Regional Manager vs. Nikunja Bihari Patnaik** reported as **1996 (9) SCC 69**, wherein it has been held as under :

“7.           It       may       be

*mentioned that in the memorandum of charges, the aforesaid two regulations are said to have been violated by the respondent. Regulation 3 requires every officer/employee of the Bank to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. It requires the officer/employee to maintain good conduct and discipline and to act to the best of his judgment in performance of his official duties or in exercise of the powers conferred upon him. Breach of Regulation 3 is "misconduct" within the meaning of Regulation 24. The findings of the Enquiry Officer which have been accepted by the disciplinary authority, and which have not been disturbed by the High Court, clearly show that in number of instances the respondent allowed overdrafts or passed*

cheques involving substantial amounts beyond his authority. True, it is that in some cases, no loss has resulted from such acts. It is also true that in some other instances such acts have yielded profit to the Bank but it is equally true that in some other instances, the funds of the Bank have placed in jeopardy; the advances have become sticky and irrecoverable. It is not a single act; it is a course of action spreading over a sufficiently long period and involving a large number of transactions. In the case of a Bank - for that matter, in the case of any other organization - every officer/employee is supposed to act within the limits of his authority. If each officer/employee is allowed to act beyond his authority, the discipline of the organisation/bank will disappear; the functioning of the Bank would become chaotic and unmanageable. Each officer of the Bank cannot be allowed to carve out his

own little empire wherein he dispenses favours and largesse. No organization, more particularly, a Bank can function properly and effectively if its officers and employees do not observe the prescribed norms and discipline. Such indiscipline cannot be condoned on the specious ground that it was not actuated by ulterior motives or by extraneous considerations. The very act of acting beyond authority - that too a course of conduct spread over a sufficiently long period and involving innumerable instances - is by itself a misconduct. Such acts, if permitted, may bring in profit in some cases but they may also lead to huge losses. Such adventures are not given to the employees of Banks which deal with public funds. If what we hear about the reasons for the collapse of Barings Bank is true, it is attributable to the acts of one of its employees, Nick Leeson, a minor officer stationed at Singapore, who was allowed by

*his superiors to act far beyond his authority. As mentioned hereinbefore, the very discipline of an organization and more particularly, a Bank is dependent upon each of its employees and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and a breach of Regulation 3. It constitutes misconduct within the meaning of Regulation 24. No further proof of loss is really necessary though as a matter of fact, in this case there are findings that several advances and over-drawals allowed by the respondent beyond his authority have become sticky and irrecoverable. Just because, similar acts have fetched some profit - huge profit, as the High Court characterizes it - they are no less blameworthy. It is wrong to characterize them as errors of judgment. It is not suggested that the respondent being a Class-I officer was not aware of the limits*

*of his authority or of his powers. Indeed, Charge No.9, which has been held established in full is to the effect that inspite of instructions by the Regional Office to stop such practice, the respondent continued to indulge in such acts. The Enquiry Officer has recorded a clear finding that the respondent did flout the said instructions and has thereby committed an act of disobedience of lawful orders. Similarly, Charge No.8, which has also been established in full is to the effect that inspite of reminders, the respondent did not submit "Control Returns" to the Regional Office. We fail to understand how could all this be characterized as errors of judgment and not as misconduct as defined by the regulations. We are of the opinion that the High Court has committed a clear error in holding that the aforesaid conduct of the respondent does not amount to misconduct or that it does not constitute violation of*

*Regulations 3 and 24. [Emphasis supplied]”*

A similar view was taken by the Apex Court in the case of **Chariman & Managing Director, United Commercial Bank & Ors. v. P.C. Kakkar** reported as **2003 (4) SCC 364**, wherein it has been held as under :

*“12. The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards.*  
*In view of what has been stated in the Wednesbury's case (supra) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the*

decision.

*13. To put difference unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to certain litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed.*

*14. In the case at hand the High Court did not record any reason as to how and why it found the punishment shockingly disproportionate. Even there is no discussion on this aspect. The only discernible reason was the punishment awarded in M.L. Keshwani's case. As was*

*observed by this Court in Balbir Chand vs. Food Corporation of India Ltd. and Ors. (1997 [3] SCC 371), even if a co-delinquent is given lesser punishment it cannot be a ground for interference. Even such a plea was not available to be given credence as the allegations were contextually different.*

*15. A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v.*

*Nikunja Bihari Patnaik (1996 (9) SCC 69),*  
*it is no defence available to say that there*  
*was no loss or profit resulted in case, when*  
*the officer/employee acted without*  
*authority. The very discipline of an*  
*organization more particularly a Bank is*  
*dependent upon each of its officers and*  
*officers acting and operating within their*  
*allotted sphere. Acting beyond one's*  
*authority is by itself a breach of discipline*  
*and is a misconduct. The charges against*  
*the employee were not casual in nature and*  
*were serious. These aspects do not appear*  
*to have been kept in view by the High*  
*Court. [Emphasis supplied]"*

In a recent judgment, the Apex Court in the case of **Life Insurance Corporation of India and others v. S. Vasanthi** reported as **(2014) 9 Supreme Court Cases 315**, while considering various earlier judgments of the Apex Court, has culled out the following principles :

***"11. We are of the opinion that the High Court transgressed its limits of judicial review by itself assuming the role of sitting***

*as departmental appellate authority, which is not permissible in law. The principles discussed above have been summed up and summarised as follows in the case of Lucknow Kshetriya Gramin Bank (Now Allahabad, Uttar Pradesh Gramin Bank) & Anr. v. Rajendra Singh. (2013) 12 SCC 372 :*

**19.1** *When charge(s) of misconduct is proved in an enquiry, the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.*

**19.2** *The courts cannot assume the function of disciplinary/ departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.*

**19.3** *Limited judicial review is*

available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.

**19.4** *Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.*

**19.5** *The only exception to the principle stated in para (d) above, would be in those cases*

*where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable.*

***[Emphasis supplied]***

In view of the above facts and the settled position of law, I  
unhesitantly order dismissal of the writ petition, with no order as to costs.

**( DEEPAK SIBAL )**  
**JUDGE**

**Pronounced On : 07.04.2015**

*monika*