

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 17215 of 2013
Date of Decision : July 07, 2015**

Sukhlal Singh

...Petitioner

Versus

Indian Overseas Bank and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr. Dinesh Kumar, Advocate
for the petitioner.

Mr. Ramesh Chopra, Advocate
for the respondents.

--

HARINDER SINGH SIDHU, J.

The petitioner, who was working as SCA (*Clerk assigned with Special Assistant Duties*) with respondent-Bank has filed this writ petition praying for setting aside the order dated 26.05.2012 (Annexure P-9) whereby he has been ordered to be dismissed from service. He has also challenged order dated 12.03.2013 (Annexure P-10), whereby, his appeal against the order of dismissal has been

rejected.

One Ved Prakash, who had saving Bank Account No.15688 in the YMCA Branch, Faridabad of the respondent-Bank submitted an application to the Manager of the Bank stating that he had come to the Bank on 14.07.2010 to withdraw money from his account, and he came to know that Rs.30,000/- had been withdrawn from his account on 13.07.2010. He stated that he had withdrawn Rs.2,000/- on 17.06.2010. He requested that error in the account be rectified. On this information, the Branch Manager called for the vouchers of the preceding dates, but he could not locate the particular withdrawal slip relating to withdrawal of this amount. He informed the Senior Manager and on going through the print out of the entries of that date, it was noticed that the withdrawal slip was debited by Sh. A.K.Setia and passed by the petitioner. Mr. Setia informed that as per instructions of the petitioner the withdrawal slip was passed without the pass-book and Ramesh Kumar, Cashier informed that the cash was taken by the petitioner. The petitioner happened to be on leave on that day. When he came to the Bank the next day, he was informed about the incident. After some time, he was able to trace out the withdrawal slip. As the explanation of the petitioner regarding his permitting the passing of the withdrawal slip without the accompanying pass-book and as to why he had collected the cash, was supposedly not found satisfactorily, the petitioner was directed to

pay the amount to the complainant , which he did. Stating that it was not a usual transaction, a preliminary enquiry in the matter was referred to the Investigating Officer of the Bank vide letter dated 29.07.2010 (Annexure P-1/A). The Investigating Officer in his report dated 14.08.2010 (Annexure P-2), observed that the petitioner had permitted passing of withdrawal slip without pass-book and taken cash amounting to Rs.30,000/- on behalf of the customer and concluded that the petitioner is primarily responsible for the alleged fraud. The petitioner was placed under suspension and a charge-sheet was issued to the petitioner on 17.09.2011 (Annexure P-5), wherein the main allegation based on the representation dated 14.07.2010 of Sh. Ved Prakash was that an amount of Rs.30,000/- had been withdrawn from his Saving Bank Account on 13.07.2010, but as per his statement, he had neither come to the Branch nor given any withdrawal slip to anyone for withdrawal of the said amount. An amended charge-sheet was issued on 27.09.2011 (Annexure P-6), which contains the following articles of charge:

“Article of Charge

- 1. On 13.07.2010 you had fraudulently withdrawn Rs. 30,000/- from the SB A/c NO. 15688 of Mr. Ved Prakash through a withdrawal slip which had been obtained by you earlier with the customer's signature and misappropriated the amount for your undue pecuniary gains.*
- 2. You had hidden the paid withdrawal slip in order to conceal the fraud and when the matter was raised about the missing instrument, you had produced the same as if found from a waster paper basket.*
- 3. When the issue of fraudulent withdrawal came to light, you had accepted the misappropriation of the amount*

and you made good the loss to the customer on 29.07.2010.

Thus ,it is charged that by your above acts.

a) You had attempted to cause damage to the property of Bank's customer and there by committed Gross misconduct within the meaning of Clause 5 (d) of Memorandum of Settlement dated 10.04.2002 between the Bank and its workmen.

b) You had acted prejudicial to the interest of the Bank within the meaning of Gross misconduct as defined in Clause 5(j) of Memorandum of Settlement dated 10.04.2002 between the Bank and its workmen.””

The relevant portions of the Memorandum of Settlement are extracted below:

5(d) Willful damage or attempt to cause damage to the property of the Bank or any of its customers.

5(j) doing any act prejudicial to the interest of the Bank or Gross negligence or negligence involving or likely to involve the Bank in serious loss.”

The petitioner participated in the enquiry proceedings, he explained the circumstances, in which he had collected Rs. 30,000/- on account of the account holder. Reliance was also placed on the evidence of Ved Prakash complainant, who during his cross-examination deposed that he had come to the Branch on 13.07.2010 to withdraw money. After receiving the token, he felt uneasy and gave the token to the petitioner to collect and keep the amount on his behalf. When he came back to the Bank on 14.07.2010, he found the petitioner on leave and gave the representation to the Bank. He explained that he was suffering from memory loss due to his son's sudden death in a shooting. He had asked the Branch Manager to give him back his letter but the Branch Manager refused to do so. As he was not well, he had gone to his native village and on his return collected the amount from the petitioner.

The Enquiry Officer however did not accept the contention that the complaint was made against the petitioner by the Account Holder on account of sudden confusion and memory loss. He held that it is proved that the petitioner had withdrawn a sum of Rs. 30,000/- from the Saving Bank Account No. 15688 of Sh. Ved Prakash through a withdrawal slip that had been obtained earlier by him and that he retained the amount without handing it over to the customer. He concluded that it was clearly established during the course of the enquiry that the account holder was very well known to the petitioner and he often used to approach the petitioner for his banking needs. Hence, Charge No. 1 was proved. Similarly, Charge No. 2 relating to having hidden the paid withdrawal slip in order to conceal the fraud was also held proved. Regarding charge No. 3, it was concluded that it was partly proved to the extent that the petitioner had remitted the amount of Rs. 30,000/- to the customer but the part regarding acceptance of misappropriation by the petitioner was held not proved. Thus, two charges were proved and one charge regarding misappropriation was partly proved. It was concluded that the petitioner had acted with gross negligence and in a manner prejudicial to the interest of the Bank under Clause 5(j) of the Memorandum of Settlement between the Bank and its workman. Thereafter, the disciplinary authority issued notice to the petitioner regarding personal hearing and proposed punishment of dismissal and vide order

26.05.2012, the punishment of dismissal was imposed.

The petitioner filed an appeal before the Appellate Authority, which was dismissed vide order dated 12.03.2013.

It is the aforesaid two orders that have been assailed in the present writ petition.

The learned counsel for the petitioner contends that though on the facts the charges cannot be held to be proved, but he is limiting his arguments to the contention that order of dismissal, in the facts and circumstances of the case, is wholly disproportionate to the alleged misconduct. He states that the enquiry report is based on no evidence at all. He refers to the statement of the complainant Shri Ved Prakash dated 13.08.2010 recorded before the Enquiry Officer, which has been annexed as Annexure R-1 and is as under:-

“Statement of Mr. Ved Prakash's B A/C No. 15688 taken on 13.08.2010 in the presence of Mr. G.S. Gupta, 15151, Manager,-Fraudulent withdrawal of Rs. 30,000/- on 13.07.2010 from SB 15688-Mr. Ved Prakash.

IO-When did you come to know that Rs. 30,000/- had been fraudulently withdrawn from your SB A/C No. 15688?

VP-I came to know that Rs. 30,000/- was fraudulently withdrawn from my SB A/C No. 15688 on 14.07.2010 when I had come to the Bank to withdrawn money.

IO- Have you opted for SMS facility from the Bank?

VP- I do not have a mobile phone.

IO- Have you signed on the disputed withdrawal slip of Rs. 30,000/-

VP- Yes the signatures on the disputed withdrawal slip is my signature.

IO- Then how the payment of disputed withdrawal slip has been taken by someone else?

VP- It is difficult to say as to how the disputed withdrawal slip has fallen into wrong hands.

IO- Have you received the payment of Rs. 30,000/-

when and who has given you the payment?

VP- Yes. I have received the payment of Rs. 30,000/- on 29.07.2010.

Sd/-

(Ved Prakash)

SB A/C 15688

Sd/-

(G.S. Gupta)

Manager

Sd/-

(Jerry D'souja)

Investigating Officer"

In this statement, the complainant Shri Ved Prakash does

not dispute his signatures on the withdrawal slip. He states that it is difficult to say as to how the disputed withdrawal slip landed into the hands of the petitioner. He admits to having received the payment of Rs.30,000/- on 29.07.2010. In his cross-examination, the complainant/account holder appearing as M.W.-5 (Management Witness) had deposed that he came to the Branch on 13.07.2010 to withdraw money. After receiving the token, he felt uneasy and gave token to the petitioner to collect the amount. When he came to the Bank on the next date i.e. 14.07.2010, he found the petitioner on leave. He got annoyed and gave the complaint (M.E.-4) to the Bank Manager. He explained that he was suffering from memory loss due to his son's sudden death in a shooting incident but his confusion was removed when he met the petitioner after few days and was satisfied that the petitioner had collected the payment from his account on his behalf and there was nothing wrong. He, therefore, requested the Branch Manager to give back his complaint letter, since it was wrongly made out of confusion but the Branch Manager did not give him back his complaint letter and then he gave his affidavit (Ex.DE-1) clarifying the position. He affirmed that on 29.07.2010, the petitioner handed

over to him Rs.30,000/- which the petitioner had collected from his account on his behalf. He clarified that since he had gone to his native village, hence there was delay and that he had no doubt that his money was safe with the petitioner.

Learned counsel also refers to the finding of the Enquiry Officer that it is clearly established during the course of enquiry that the account holder was very well known to the petitioner and often used to approach the petitioner for his banking needs. In this context, he also refers to the evidence of Mr.A.K.Setia (M.W.-3), wherein, he states that the customer Ved Prakash was very well known to the petitioner and that several times the customer came to the petitioner for operating his account.

Learned counsel for the petitioner contends that the petitioner had, at no stage denied that he did not withdraw the amount of Rs.30,000/- from the account of the customer. He also produced the withdrawal slip when the Bank Manager had asked him to explain the position. He contends that it had been established that the customer was very well known to the petitioner and he often met him for help in connection with his banking needs. The customer after making the complaint had gone to his village and when he returned the petitioner had handed over the money to him on 29.07.2010 in the presence of the Branch Manager. The money was retained by the petitioner from 13.07.2010 to 29.07.2010 as the custodian of the

customer and there was no fraudulent or mala-fide intention on his part. There was nothing furtive about the whole transaction which would show any ill-intention on his part to misappropriate the amount. The petitioner had openly asked his colleagues to pass the withdrawal slip without the pass-book and he had received the money on behalf of the customer from the Cashier. The petitioner could not be expected to be so naive that he could misappropriate the amount, openly, received by him from the account of the customer. Learned counsel also contends that it is not unusual for the banking staff to help their known customers and sometimes even withdraw money on their behalf, if the exigency so demands.

It is contended that the petitioner has clearly accepted that he had withdrawn the money on behalf of the account holder and the complainant/account holder has also explained the circumstances, in which the original complaint was made on account of misconception and that he had thereafter sought to withdraw the complaint, but the Bank Manager refused to return the original complaint. In these circumstances, especially, when the charge of misappropriation was not proved and the circumstances of the withdrawal of money adequately explained, the petitioner was liable to be discharged in the enquiry. In any case, the punishment awarded is wholly disproportionate and shockingly harsh as after the explanation furnished by the complainant regarding his original complaint, the

entire substratum of the charge fell flat.

To the contrary, learned counsel for the respondent-Bank has stressed that the Bank employees hold a position of trust where honesty and integrity are essential and basic requirement. He stated that the petitioner had got withdrawal slip with the signatures of the customer on an earlier date and withdrew the amount of Rs.30,000/- after requesting his colleagues to pass the withdrawal slip without the accompanying pass-book and also received the payment from cashier by stating that he would hand over the amount to the customer. However, he did not do so and it was only on 29.07.2010, when he was asked to do so by the Branch Manager that he handed over the money to the customer. He states that the findings of the Enquiry Officer are justified and that the statement of the customer in cross-examination seeking to exonerate the petitioner is an afterthought and made at the behest of the petitioner in order to protect him. He also raises a preliminary objection to the maintainability of the petition by stating that the petitioner is a workman and the Bank is a commercial establishment, hence the petitioner has an alternative and efficacious remedy under the Industrial Disputes Act, 1947.

Heard learned counsel for the parties and have gone through the records.

At the outset, it is necessary to deal with the preliminary objection of the Ld. Counsel for the respondent regarding the

maintainability of the petition in view of there being an alternative remedy under the Industrial Disputes Act, 1947.

This issue has been discussed by the Hon'ble Supreme Court in a large number of cases. The view appears to be that the rule of exclusion of writ jurisdiction for the availability of alternative remedy is a rule of discretion and not one of compulsion and the court must consider the pros and cons of the case and may interfere in cases involving enforcement of fundamental rights, or where the proceedings are without jurisdiction etc. or where there are special circumstances warranting interference.

In the present case, Ld. Counsel for the petitioner has limited his arguments to the contention that the punishment of dismissal awarded to him is grossly disproportionate and harsh. In view of this, I feel that this would be a fit case where the writ petition could be entertained.

I agree with the Ld. Counsel for the petitioner that the punishment awarded to the petitioner is grossly disproportionate and harsh when viewed in the light of the lapses.

This is specially so when it is noted that the complainant Shri Ved Prakash does not dispute his signatures on the withdrawal slip. He disowned any knowledge as to how the disputed withdrawal slip landed into the hands of the petitioner. While appearing as Management Witness (MW-5), he in his cross-examination deposed

that he came to the Branch on 13.07.2010 to withdraw money. After receiving the token, he felt uneasy and gave token to the petitioner to collect the amount. When he came to the Bank on the next date i.e. 14.07.2010, he found that the petitioner was on leave. He got annoyed and gave the complaint (M.E.-4) to the Bank Manager. He explained that he was suffering from memory loss due to his son's sudden death in a shooting incident but his confusion was removed when he met the petitioner after few days and was satisfied that the petitioner had collected the payment from his account on his behalf and there was nothing wrong. He had requested the Branch Manager to give him back his complaint letter since it was wrongly made out of confusion, but the Branch Manager did not give it back to him. He affirmed that the petitioner had collected the amount from his account on his behalf. It has also come in the inquiry report that the complainant was well known to the petitioner and the petitioner used to help him in his banking transactions earlier as well.

Thus, clearly there is no misappropriation, no manipulation of records, no forging of documents, the signatures on the withdrawal slip are in the hands of the customer, and the only dispute is that he did not give the money to the customer on that very day or the next day, which is adequately explained by the fact that on 14.07.2010, the petitioner was on leave and thereafter the complainant went to his village and returned on 29.07.2010, when he was given the money.

In these circumstances, awarding of the maximum penalty of dismissal to the petitioner is clearly shocking, disproportionate and harsh and is accordingly set aside. The punishment order dated 26.5.2012 (Annexure P-9) and the order of the Appellate Authority dated 12.3.2013 (Annexure P-10) are quashed.

Summing up the law on the aspect of disproportionate punishment, it was observed by the Hon'ble Supreme Court in **S.R.**

Tewari v. Union of India, (2013) 6 SCC 602 :

“23. The Court must keep in mind that judicial review is not akin to adjudication on merit by reappreciating the evidence as an appellate authority. Thus, the court is devoid of the power to reappreciate the evidence and come to its own conclusion on the proof of a particular charge, as the scope of judicial review is limited to the process of making the decision and not against the decision itself and in such a situation the court cannot arrive on its own independent finding. (Vide High Court of Judicature of Bombay v. Udaysingh, State of A.P. v. Mohd. Nasrullah Khan and Union of India v. Manab Kumar Guha.)

24. The question of interference on the quantum of punishment has been considered by this Court in a catena of judgments and it was held that if the punishment awarded is disproportionate to the gravity of the misconduct, it would be arbitrary, and thus, would violate the mandate of Article 14 of the Constitution. In Ranjit Thakur v. Union of India, this Court observed as under: (SCC pp. 620-21, paras 25 & 27)

“25. 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.

27. In the present case the punishment is so strikingly disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review.”

(See also *Union of India v. G. Ganayutham*, *State of U.P. v. J.P. Saraswat*, *Chandra Kumar Chopra v. Union of India* and *High Court of Patna v. Pandey Gajendra Prasad*.)

25. In *B.C. Chaturvedi v. Union of India*, this Court after examining its various earlier decisions observed that in exercise of the power of judicial review, the court cannot “normally” substitute its own conclusion or penalty. However, if the penalty imposed by an authority “shocks the conscience” of the court, it would appropriately mould the relief either directing the authority to reconsider the penalty imposed and in exceptional and rare cases, in order to shorten the litigation, itself impose appropriate punishment with cogent reasons in support thereof. While examining the issue of proportionality, the court can also consider the circumstances under which the misconduct was committed. In a given case, the prevailing circumstances might have forced the accused to act in a certain manner though he had not intended to do so. The court may further examine the effect, if the order is set aside or substituted by some other penalty. However, it is only in very rare cases that the court might, to shorten the litigation, think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority.

26. In *V. Ramana v. A.P. SRTC*, this Court considered the scope of judicial review as to the quantum of punishment is permissible only if it is found that it is not commensurate with the gravity of the charges and if the Court comes to the conclusion that the scope of judicial review as to the quantum of punishment is permissible only if it is found to be “shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards.” In a normal course, if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority to reconsider the penalty imposed. However, in order to shorten the litigation, in exceptional and rare cases, the court itself can impose appropriate punishment by recording cogent reasons in support thereof.

27. In *State of Meghalaya v. Mecken Singh N. Marak* this

Court observed that: (SCC p. 584, paras 13-14)

“13. ... A court or a tribunal while dealing with the quantum of punishment has to record reasons as to why it felt that the punishment is not commensurate with the proved charges.

14. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. ... The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review.”

(See also A.P. SRTC v. P. Jayaram Reddy.)

28. The role of the court in the matter of departmental proceedings is very limited and the court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the court is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. The court has to record reasons as to why the punishment is disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice. (Vide Union of India v. Bodupalli Gopalaswami and Sanjay Kumar Singh v. Union of India.)

29. In Union of India v. R.K. Sharma, this Court explained the observations made in Ranjit Thakur observing that if the charge was ridiculous, the punishment was harsh or strikingly disproportionate it would warrant interference. However, the said observations in Ranjit Thakur are not to be taken to mean that a court can, while exercising the power of judicial review, interfere with the punishment merely because it considers the punishment to be disproportionate. It was held that only in extreme cases, which on their face, show perversity or irrationality, there could be judicial review and courts should not interfere merely on compassionate grounds.”

As observed by the Hon'ble Supreme Court ordinarily after

setting aside a punishment on the ground of being harsh and

disproportionate the matter should be remitted to the competent

authority, but in order to shorten litigation, the Court may in certain

circumstances substitute the punishment itself.

Adopting the latter course in this case, while setting aside the orders dated 26.5.2012 and 12.3.2013 passed by the Disciplinary Authority and the Appellate Authority, respectively, I deem it appropriate that the punishment of dismissal be substituted with the punishment of compulsory retirement, which also is a major penalty. Ordered accordingly.

Petition is disposed of in the above terms.

July 07, 2015
Atul

(HARINDER SINGH SIDHU)
JUDGE