

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARAYANA AT CHANDIGARH**

Date of Decision: October 21, 2015

LPA No.1250 of 2015 (O&M)

Oriental Bank of Commerce & others ...Appellants

Versus

Ram Kumar ...Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

Present: Dr. Anmol Rattan Sidhu, Senior Advocate, with
Mr. R.N.Lohan & Mr. S.K.Sharma, Advocates, for the appellants.

Mr. Rajiv Atma Ram, Senior Advocate, with
Mr. Shube Sharma, Advocate, for the respondent.

HEMANT GUPTA, J.

The present appeal under Clause X of the Letters Patent is directed against an order passed by the learned Single Judge on 23.07.2015, whereby the order of compulsory retirement of the respondent herein (writ petitioner) dated 07.10.2014 was set aside and the matter was remitted back to the Punishing Authority to consider the imposition of penalty upon the writ petitioner after reinstating him in service, as awarded in the case of Pramod Bhalerao.

The brief facts leading to the present appeal are that the writ petitioner was appointed as Peon on 03.12.1992. The educational qualification for recruitment of Peon was that the candidate should have passed in 8th standard or its equivalent, but he should not have passed 10th examination or its equivalent. In the Interview Assessment Form, the petitioner disclosed his education qualification as 8th passed.

It was after 22 years of service, the writ petitioner was issued a charge-sheet that he has given wrong declaration at the time of his appointment by

mentioning that he is only 8th passed, whereas he was 10th passed at that time. Thereafter, on the basis of inquiry report to the effect that the petitioner was 10th pass at the time of appointment and that he has given wrong declaration while submitting the application form, the penalty of compulsory retirement with superannuation benefits was proposed on 26.09.2014. After considering the reply to the proposed penalty, such proposed penalty was awarded vide order dated 07.10.2014.

The petitioner challenged the punishment imposed before this Court in a writ petition while asserting that it is harsh punishment keeping in view the fact that the petitioner has unblemished service record of 22 years out of which he had served in clerical cadre for more than 9 years. It is also pointed out the only allegation against the petitioner was that he is over qualified for the post at the time of his appointment. It was not a case of forged document or any false certificate for getting appointment in the Bank. The petitioner relies upon an order passed in the case of one Parmod Bhalerao, Clerk, who has been inflicted punishment of reduction to one stage low in the scale of pay for a period of 5 years on 30.01.2006 on the similar allegation of not disclosing correct educational qualification at the relevant time.

A perusal of the order (Annexure P-4) passed in the case of Parmod Bhalerao shows that the order of punishment of reduction to one stage low in the scale of pay for a period of five years was passed when he has attained the age of 42 years though his age at the time of recruitment was 27 years and that he has lost his chances to get employment as the age for recruitment of Scheduled Castes candidate is 33 years.

The learned Single Judge relied upon the judgment of Hon'ble Supreme Court in Life Insurance Corporation of India & others Vs. Triveni Sharan Mishra (2014) 10 SCC 346 to grant same relief as was granted to Parmod

Bhalerao. The Court also noticed that the criteria of laying down of maximum qualification has been deprecated by the Hon'ble Supreme Court in Mohd. Riazul Usman Gani & others Vs. District & Sessions Judge, Nagpur & others (2000) 2 SCC 606. Thus, the Court found that step-fatherly treatment could not have been meted out to the petitioner in the matter of punishment and, therefore, the matter was remitted back to consider the imposition of penalty upon the petitioner.

In Triveni Sharan Mishra's case (supra), the employer was in appeal challenging the order of the High Court reinstating an employee. As per the Service Rules of the employer, the candidates who have passed Standard XII and have secured 50% or more marks, Graduates or Post-graduates were not to be considered for the post of Peon. The Court found that the employee was Graduate on the date, when he submitted application for the post of Peon and the declaration made by him that he possessed no further qualification was incorrect. The Court referred to Mohd. Riazul Usman Gani's case (supra), wherein the criteria of maximum qualification for the post of Peons, was deprecated. But having said so, the Court ordered the imposition of similar penalty, as imposed upon the similarly situated employee namely Daluram Patidar for mentioning less qualification to secure the job.

In the present case, there is no challenge to the eligibility conditions in pursuance of which the petitioner was appointed. He has submitted application accepting the eligibility criteria fixed under the Regulations at the time of his appointment. Still further, there is no challenge to the qualification in the Regulations in the writ petition. Therefore, the argument that the maximum qualification fixed under the Regulations is illegal and arbitrary, cannot be permitted to be raised by the writ petitioner at this stage.

It may be noticed that in Mohd. Riazul Usman Gani's case (supra), challenge was to the selection of Peons on the basis that candidates possessing

more than the maximum qualification prescribed under the Rules are not eligible. The eligibility criteria was challenged, when the applications were being considered. But once the petitioner has sought appointment on the basis of the Regulations, as was then in existence, the candidate such as the writ petitioner cannot be permitted to dispute the educational qualification fixed under the Regulations.

We further find that the punishment imposed on two employees was in different set of circumstances. The writ petitioner was imposed punishment of compulsory retirement after he has put in 22 years of service. The penalty imposed reads as under:

“Compulsory retirement with superannuation benefits i.e. Pension and Gratuity as would be due otherwise under the rules or regulations prevailing on the date of order of punishment and without disqualification from future employment.”

The order imposing penalty, as reproduced above, protects the right of employment and also the grant of superannuation benefits i.e. Pension and Gratuity. On the other hand, in the case of Pramod Bhalerao, he has not completed 20 years of qualifying service entitling him to superannuation benefits. A person, who has been given pensionary benefits and a person, who cannot be given pensionary benefits, cannot be treated at par and have been rightly not treated at par by the Punishing Authority. Recently, the Hon’ble Supreme Court examined the question of parity in imposing punishments in a judgment reported as Lucknow Kshetriya Gramin Bank Vs. Rajendra Singh, (2013) 12 SCC 372. The Court held that the quantum of punishment to be imposed in a particular case is in domain of the departmental authorities and that the only exception is 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. It was held that such a comparison is permissible only when the other employee(s) who is given lighter punishment was a co-delinquent. Such a comparison is not permissible by citing the cases of other employees, as precedents, in altogether different departmental enquiries. The relevant extract from the judgment reads as under:

“13. Indubitably, the well-ingrained principle of law is that it is the disciplinary authority, or the appellate authority in appeal, which is to decide the nature of punishment to be given to a delinquent employee keeping in view the seriousness of the misconduct committed by such an employee. Courts cannot assume and usurp the function of the disciplinary authority. In *Apparel Export Promotion Council Vs. A.K. Chopra (1999) 1 SCC 759* this principle was explained in the following manner: (SCC p. 773, para 22)

“22. ... The High Court in our opinion fell in error in interfering with the punishment, which could be lawfully imposed by the departmental authorities on the respondent for his proven misconduct. ... The High Court should not have substituted its own discretion for that of the authority. What punishment was required to be imposed, in the facts and circumstances of the case, was a matter which fell exclusively within the jurisdiction of the competent authority and did not warrant any interference by the High Court. The entire approach of the High Court has been faulty. The impugned order of the High Court cannot be sustained on this ground alone.”

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15. As is clear from the above that the judicial review of the quantum of punishment is available with a very limited scope. It is only when the penalty imposed appears to be shockingly disproportionate to the nature of misconduct that the courts would frown upon. Even in such a case, after

setting aside the penalty order, it is to be left to the disciplinary/appellate authority to take a decision afresh and it is not for the court to substitute its decision by prescribing the quantum of punishment.

16. In the present case, however, we find that the High Court has, on the one hand directed the appellate authority to take a decision and in the same breath, snatched the discretion by directing the appellate authority to pass a particular order of punishment. In normal course, such an order would clearly be unsustainable, having regard to the legal position outlined above. The peculiar feature, however, is that the High Court has done so proceeding on the presumption that these three respondents are equally and identically placed as the other three employees who had admitted the charges, though this parity is not spelled out in the impugned order. Whether this approach of the High Court is tenable, looking into the facts of this case, is the moot question.

17. If there is a complete parity in the two sets of cases, imposing different penalties would not be appropriate as inflicting of any/higher penalty in one case would be discriminatory and would amount to infraction of the doctrine of equality enshrined in Article 14 of the Constitution of India. That is the ratio of *Rajendra Yadav Vs. State of M.P. (2013) 3 SCC 73*, already taken note above. On the other hand, if there is some difference, different penalty can be meted out and what should be the quantum is to be left to the appellate authority. However, such a penalty should be commensurate with the gravity of misconduct and cannot be shockingly disproportionate. As per the ratio of *Obettee (P) Ltd. Vs. Mohd. Shafiq Khan (2005) 8 SCC 46* even if the nature of misconduct committed by the two sets of employees is same, the conduct of one set of employees accepting the guilt and pleading for lenient view would justify lesser punishment to them than the other employees who remained adopted the mode of denial, with the result that charges stood proved ultimately in a full-fledged enquiry conducted against them. In that event, higher penalty can be imposed upon such delinquent employees. It would follow that choosing to take a chance to contest the charges such employees thereafter cannot fall back and say that the penalty in their cases cannot be more than the penalty which is imposed upon those employees who accepted the charges at the outset by tendering unconditional apology.

18. This, according to us, would be the harmonious reading of *Obettee (P) Ltd. Vs. Mohd. Shafiq Khan (2005) 8 SCC 46* and *Rajendra Yadav Vs. State of M.P. (2013) 3 SCC 73*.

19. The principles discussed above can be summed up and summarised as follows:

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 19.4 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.

20. It is made clear that such a comparison is permissible only when the other employee(s) who is given lighter punishment was a co-delinquent. Such a comparison is not permissible by citing the cases of other employees, as precedents, in altogether different departmental enquiries”.

Thus, the punishment awarded to Parmod Bhalerao being in different proceedings cannot be made basis to assert that the punishment imposed is discriminatory. Still further, the circumstances in two situations are different. In

one, the delinquent is entitled to superannuary benefits and in the other no benefit would have accrued to him.

In view of the above discussion, the present appeal is allowed. The order dated 23.07.2015 passed by the learned Single Judge is set aside and the writ petition stands dismissed.

(HEMANT GUPTA)
JUDGE

21.10.2015
Vimal

(RAJ RAHUL GARG)
JUDGE