I- R-11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: September 16, 2015

\+ W.P.(C) 4476/2000

PRAVEEN SHRIVASTAVA ..... Petitioner
Through: Mr. Abhindra Maheshwari & Mr. Pankaj Singh, Advocate

versus

ALLAHABAD BANK ..... Respondent
Through: Mr. C. Mukund, Mr. Ashok Kumar Jain, Mr. Pankaj Jain & Ms. Yaamini Sharma, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
% **(ORAL)**

Petitioner was Manager of respondent-Bank, who has been dismissed from service consequent upon an enquiry being held against him. The dismissal order of 23rd December, 1997 *(Annexure P-8)* was challenged by petitioner by way of a statutory appeal and petitioner's appeal also stands dismissed vide impugned order of 6th June, 1998 *(Annexure P-10)*. Petitioner had also filed a review petition, which also stands dismissed vide order of 26th September, 1998 *(Annexure P-12)*.

The case set out against petitioner, as noticed in the Enquiry Report, is as under:-

'Sh. Praveen Srivastava, while posted and functioning as Manager (Adv.) at Nawada Branch during the period from

January 94 to April 97 fraudulently withdrew a sum of ₹45,000/- from the SB A/C No. 9216 of Mahatma Jitendra Muni (deceased) on 6.12.96 through a withdrawal form containing forged signatures which he passed for payment himself. Out of the amount of ₹45,000/- so fraudulently withdrawn by him Sh. Praveen Srivastava deposited ₹40,000/- in his SB A/C No.3000 with Smt. Nisha Srivastava and received the balance amount of ₹5000/- in cash from the receipt cashier.

The Passbook of the amount had been taken over by Sh.Praveen Srivastava from the claimants of the balance in the deceased account when they had come to the branch for ascertaining the formalities to be completed in this regard but he fraudulently used the same for his ulterior purpose. Sh. Parveen Srivastava also did not record the fact regarding expiry of the account-holder in the ledger account No.9216 intentionally.

Further, in order to suppress the evidence in the matter Sh.Praveen Srivastava removed the entire voucher bundle dt. 6.12.96 from the branch.

The aforesaid acts of omission/ commission committed by Sh. Praveen Srivastava, which are prejudicial to the interest of the bank, are in violation of Regulation 3 (1) of Allahabad Bank Officer Employee' (conduct) Regulations 1976 tentamounting to misconduct under Regulation 24 of the said Regulations.'

The crux of the charge against petitioner is that he had fraudulently withdrawn a sum of ₹45,000/- from the saving bank account of one-

Mahatma Jatinder Muni (deceased) on 6th December, 1996 through withdrawal form containing forged signatures of the Account Holder and petitioner himself had passed it for payment. Petitioner was charged that he deposited ₹40,000/- out of the said amount in his joint saving account and took the cash amount of ₹5,000/- and he also removed the entire vouchers bundle of 6th December, 1996 from the branch of the bank to suppress the evidence.

In the Enquiry, petitioner was proceeded *ex parte* on 11th September, 1997. It is also noted by the Enquiry Officer that a letter of 24th September, 1997 was received from petitioner whereby he had informed that he could not attend the proceedings, as his Defence Assistant was not posted at Merrut. This letter was received by the Enquiry Officer through messenger on 29th September, 1997 and it stands recorded by the Enquiry Officer that he informed the special messenger that petitioner should attend the enquiry proceedings on the next date i.e. on 30th September, 1997. However, petitioner did not attend the enquiry proceedings on 30th September, 1997. It also stands noted by the Enquiry Officer that petitioner had produced his letter of 7th April, 1997 wherein he had admitted having withdrawn ₹45,000/- there years ago and after the complaint of his depositing the said amount on 8th April, 1997 in the Sundry Creditor's Account.

The operative portion of the impugned order *(Annexure P-10)* is as under:-

> "*I as an Appellate Authority have gone through the records of the Enquiry and the various submissions made by the appellant and am of the view that the Enquiry has been*

conducted as per Rules/ Provisions of the Bank and sufficient opportunities were given to the Charged Officer. The charges have been proved which are grave in nature and shaken the confidence reposed on Shri Praveen Srivastava by the Bank. Further I find no valid grounds or any other extenuating circumstances to interfere with the decision of the Disciplinary Authority. Hence, I am not inclined to interfere with the punishment awarded to Shri Praveen Srivastava by the Disciplinary Authority vide Order dt. 23.12.97. Accordingly the appeal is rejected.

Let this order be communicated to Shri Praveen Srivastava immediately."

At the hearing, learned counsel for petitioner submits that infact Dyal Muni had impersonated as the Account Holder-*Jatinder Muni* and had withdrawn a sum of ₹45,000/- but upon being alerted by some bank officer, *Dyal Muni* was apprehended, who disclosed that the account holder-*Jatinder Muni* is hospitalized and he needs money for his treatment and by taking compassionate view, petitioner had given amount of ₹5,000/- to *Jatinder Muni* and had told him to bring *Jatinder Muni* on the next day and take the amount of ₹40,000/- from him. It is submitted that it took about three months for petitioner to get the Account Holder-*Jatinder Muni* traced out and then petitioner learnt that *Jatinder Muni* had died. It is submitted that petitioner had promptly deposited a sum of ₹45,000/- in the Sundry Creditors Account, as petitioner was given to understand that the matter would be closed thereafter but clandestinely a Memorandum was issued to him.

It is submitted on behalf of petitioner that a lenient view be taken because petitioner had unblemished service record of twenty five years and that petitioner is now aged about 68 years and that he has an ailing wife to look after and he has no means to take care of her medical expenses. It is submitted that petitioner has no children to take care of them and he has no immovable assets. It is prayed that penalty of dismissal from service be substituted with penalty of compulsory retirement, as petitioner would be able to get his retiral dues.

Learned counsel for respondent supports the impugned order and submits that petitioner has been rightly proceeded *ex parte*. To assert so, attention of this Court is drawn to petitioner's communication of 24th September, 1997 *(Annexure P-6)*. It is submitted that the complainant has already deposed against petitioner who had not sought recall of *ex parte* proceedings and had expressed the futility of leading defence evidence. It is submitted that petitioner is instrumental in the removal of the vouchers bundle in question, so that scientific evidence does not come forth to fully establish the charge against petitioner. It is submitted that no case for substitution of punishment of dismissal from service with lesser punishment of compulsory retirement is made out, as the magnitude of misconduct of petitioner is such that it does not call for any leniency.

After having heard both the sides at length, on careful scrutiny of the Enquiry Officer's report, impugned order, the material on record and Apex Court's decision in *Chennai Metropolitan Water Supply & Sewage Board & ors. Vs. T.T. Murali Babu* (2014) 4 SCC 108, this Court finds that doctrine of proportionality mandates that the extreme punishment ought not be awarded and the magnitude of misconduct ought to be seen. Regarding petitioner being proceeded *ex parte*, this Court finds that petitioner was informed on 12th September, 1997 that petitioner himself could cross-examine the Management's witnesses and the next date of hearing was fixed for 29th September, 1997. Again on 29th September, 1997, petitioner did not appear before the Enquiry Officer but had sent his messenger, who was again informed that petitioner has been proceeded *ex parte* and he should attend the enquiry proceedings on the next day i.e. on 30th September, 1997.

It is not the case of petitioner that he had appeared before the Enquiry Officer on 30th September, 1997 or that petitioner had given his written submissions to the Enquiry Officer, although an opportunity was granted to petitioner to do so. After withdrawing his admission, petitioner was served with Memorandum of Charges, which was infact a Show Cause Notice and petitioner had chosen not to respond to it. The stand now taken by petitioner ought to have been put by petitioner to the authorities concerned in response to the Memorandum received. There is no anomaly in petitioner being proceeded *ex parte* and the stand now being taken by petitioner before this Court was not taken by petitioner in the appeal nor it was taken at the earlier opportunity i.e. at the Memorandum stage. There is nothing on record to show that wife of petitioner is ailing or that petitioner has no means to attend his ailing wife. Petitioner had infact misappropriated the withdrawn amount and deposited it in his joint account and in missing of the voucher bundle, petitioner alone benefits and none else.

In the aforesaid view of this matter, this Court finds that concurrent finding of the Enquiry Officer and the Appellate Authority are neither illegal nor irrational. Impugned order does not suffer from any apparent error of law or fact. The magnitude of misconduct of petitioner is such which dissuades this Court from substituting penalty of dismissal from service to that of compulsory retirement, as this Court finds that the punishment inflicted is neither unduly harsh nor is grossly excessive. There is no justifiable ground to substitute penalty awarded with lesser punishment. Thus, finding no substance in this petition, it is dismissed.

(SUNIL GAUR)
JUDGE

SEPTEMBER 16, 2015
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