

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

Judgment reserved on October 20, 2015
Judgment delivered on November 02, 2015

+ **W.P.(C) 4809/2015**

P.N. SALUJA

..... Petitioner

Through: Petitioner in person.

versus

STATE BANK OF INDIA

..... Respondent

Through: Mr. Rajiv Kapur, Adv.

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. This case has a chequered history. The petitioner while working with the respondent bank was proceeded under the Conduct Rules in terms of charge-sheet dated October 26, 1983, whereby 9 charges were framed against him. Eight charges were proved and one was partially proved, which resulted in imposition of penalty of 'removal' from service on the petitioner vide order dated June 24, 1985. The appeal filed against the order of the disciplinary authority was rejected by the Appellate Authority on November 21, 1985. The petitioner filed Writ Petition No.1300/1988 for the quashing of the departmental proceedings from the stage of his suspension i.e. June 13, 1983 till the dismissal of

the departmental appeal seeking reinstatement in service with all consequential benefits. On January 13, 2011 the writ petition was accepted to the extent that this Court finding the order of the Appellate Authority dated November 21, 1985 being an unreasoned one remanded the matter to the said authority for passing a reasoned order. The Appellate Authority on May 20, 2011 passed a fresh order observing 6 charges as proved and 3 charges as partially proved. The petitioner's appeal was once again rejected.

2. Being aggrieved, the petitioner filed a Review Petition No.380/2011 in Writ Petition No.1300/1988. The said review petition was allowed on January 27, 2012 reviving the Writ Petition No.1300/1988. The intra court appeal filed against the said order was upheld by the Division Bench vide its order dated February 27, 2012 in LPA No.159/2012. The Special Leave Petition No.15672/2012 filed before the Supreme Court by the respondent was also dismissed on July 01, 2013. The Writ Petition No.1300/1988 was heard and decided by this Court, whereby the Court allowed the writ petition and set aside the penalty of removal of the petitioner from service by exonerating him of all the charges with a further direction that he would get all consequential service benefits. It was also observed that since he had attained the age of superannuation, he will not be ordered to be reinstated

in service. The order dated September 10, 2012 in Writ Petition No.1300/1988 was challenged by the respondent bank in an intra court appeal before the Division Bench in LPA 747/2012, which was partially allowed by the Division Bench vide its decision dated November 26, 2013 exonerating the petitioner of 7 charges and holding that on charges 8 & 9, the penalty of removal from service would be harsh and unreasonable in the facts and circumstances of the case and accordingly remanded the matter to the Disciplinary Authority to consider the question of penalty in accordance with the decision and the observation made in the said order. The said order of the Division Bench dated November 26, 2013 in LPA 747/2012 was challenged by the respondent before the Supreme Court in SLP No.3346/2014. The Supreme Court dismissed the writ petition vide its order dated February 17, 2014. It is pursuant thereto the impugned order in this writ petition i.e. order dated June 13, 2014 has been passed by the Disciplinary Authority, whereby the penalty now imposed of “reduction to a lower stage in time scale of pay and bringing basic pay down to the initial stage of JMGS-1 and fixing at Rs.700 with further directions that you will not earn increments to pay till retirement” was imposed. It may be clarified here that initially an order dated May 02, 2014 was passed by the General Manager as the appointing authority. An objection was raised by the petitioner that the

General Manager is not the disciplinary authority. In view of this objection, the Chief General Manager has passed the impugned order dated June 13, 2014 as the appointing authority/disciplinary authority.

3. The petitioner, who appeared in person, had also filed synopsis. On perusal of the writ petition and the synopsis, it is noted that the primary grounds of challenge are that the impugned order is capricious and grossly disproportionate to the charges framed against the petitioner for the use of derogatory language and misbehaviour; the penalty now imposed is arbitrary and excessive; the penalty subserve the purpose of justice and has caused undue hardship to the petitioner and substitution of another major penalty in place of removal from service is erroneous and arbitrary without any basis; the very purpose of remanding the matter by the High Court has been rendered nugatory and such a penalty could not have been passed when charges 1 to 7 were held to be unsustainable; the alleged behaviour of the petitioner with his officers on June 08, 1983 is found to be derogatory, was merely in the nature of innocuous heated outburst provoked as a result of denial of increments due to the petitioner since October, 1982; the petitioner has been in the litigation for the last 28 years and on that account as well the penalty order need to be set aside. He would rely upon the judgments of the Supreme Court in the cases reported as **1984 (2) SCC 569 Ved Prakash**

Gupta vs. Delton Cable India (P) Ltd. and *AIR 1958 SC 86 State of Uttar Pradesh vs. Mohammad Nooh* in support of his case.

4. Mr. Rajiv Kapur, learned counsel for the respondent has reiterated the stand taken by the respondent in the counter-affidavit inasmuch as the impugned orders cannot be said to be perverse. According to him, charges 8 & 9 were held to be proved against the petitioner. The penalty is proportionate to the charges framed and proved against the petitioner. He would also state that the petitioner has been paid consequential benefits pursuant to the initial round of litigation inasmuch as he was paid a sum of Rs.10,50,593/- on account of arrears of pay, Rs.78,782/- towards provident fund contribution; a sum of Rs.2,21,444/- on account of gratuity and Rs.95,328/- towards leave encashment and on petitioner's completing formalities required as per banking rules he would be granted pension. He would also state that the petitioner having accepted the benefits, which became payable pursuant to the order of the Disciplinary Authority dated June 13, 2014, he cannot challenge the order now. He would rely upon the following judgments in support of his contentions:-

(a) Chairman & Managing Director, United Commercial Bank & Ors. vs. P.C. Kakkar (2003) 4 SCC 364

(b) Damoh Panna Sagar Rural Regional Bank & Anr. vs. Munna Lal Jain (2005) 10 SCC 84

(c) State of U.P & Ors. vs. Nand Kishore Shukla & Anr.

(1996) 3 SCC 750

(d) V. Ramana vs. A.P SRTC & Ors. (2005) 7 SCC 338

(e) J.K. Synthetics Ltd. vs. K.P. Agrawal & Anr. (2007) 2 SCC 433

(f) Union of India & Ors. vs. Dwarka Prasad Tiwari (2006) 10 SCC 388

(g) Sanat Kumar Dwivedi vs. Dhar Jila Sahakari Bhoomi Vikas Bank Maryadit & Ors. (2001) 9 SCC 402

(h) A.K. Bindal & Anr. vs. Union of India & Ors. (2003) 5 SCC 163

5. Having heard the petitioner and the learned counsel for the respondent and perused the record, the issue which arises for consideration is whether the penalty which has been imposed by the disciplinary authority is disproportionate to the charges 8 and 9 which have been proved against the petitioner. This I say so for the reason that the Division Bench in LPA 747/2012 has already come to a conclusion that this Court i.e. the learned Single Judge could not have exonerated the respondent i.e. the petitioner herein from the charges 8 & 9. The Division Bench went on to examine whether the punishment meted out to the petitioner was disproportionate or arbitrary. The Division Bench concluded that the penalty of removal from service would be disproportionate and most arbitrary. It is to that limited extent the Division Bench had remanded the matter to the disciplinary authority i.e.

to consider the question of penalty. The judgment of the Division Bench dated November 26, 2013 in LPA 747/2012 has been upheld by the Supreme Court. The case of the petitioner is that even the penalty which has been imposed on him and reproduced above is disproportionate.

6. On the other hand, learned counsel for the respondent would justify the penalty.

7. The charges 8 & 9 are reproduced as under:-

“8. On the 8th June, 1983, he while posted at Sarai Khwaja Branch, unauthorizedly absented himself from duty from 3.00 PM onward and left the station of his posting without obtaining prior permission from the Branch Manager. On the same day at about 4.20 PM, while Shri H. R. Magon, the Regional Manager was discussing various matters with Shri J.C.Malhotra, Administrative Officer (General Banking) and Shri G.R.Mittal, Officer JMGS-1 in his cabin, he entered his cabin without permission, shouted and thumped the table insisting on the release of his held up increment (s). Despite Shri Magon’s explaining to him the position regarding the delay in the release of his increment(s) and asking him to behave properly, he shouted at the top of his voice used derogatory language and threatened him (Shri Magon) with dire consequences. Some of the remarks passed by him are as under:-

“Tu Bada RM Aa Gaya hai. Tere Jaise kai dekhe. Bada apne ghar ka daftar bana rakha hain. Tu kursi ke upar baith kar bol raha hai, chal neechay utar tumhen dekh lunga. Tujhe kaya samajhta hoon main”. Array, hum to Lord hain, hamsen poochhnay wala kaun hai. Tum aur tumhara branch manager kya hai. Mai kisi ki kia parwah karta hoon. Mujhse bada kaun hai”.

9. He also misbehaved with Shri J.C.Malhotra,

Administrative Officer, (General Banking) and Shri M.L.Gauri, Officer JMGS-I who tried to intervene and pacify him”.

8. The reply of the petitioner against these charges is as under:-

“8. On 8th June 83, when another time I visited Region I to request the release of my increment, which was due on 1st October, 82, Shri Magan met me in the Hall. I requested Shri Magan to release the increment,, -during the submission he abused me and rebuked me. He said “Bhan.....Tu apne app nu gunda samajhna ae, mei teri netagiri wada desa. Tu menu marwaha samjiha hoi hai”. I protest I said that I had come up to request the release of my increment and it did not behove of a Regional Manager to abuse a Junior Officer and was not comparing Mr. Marwaha (his predecessor) with him and I would report the matter to- C.R. M & if need to C.G.M. “Go then to OM and, get your increment released from C.G.M.. I went to C.R.M.”’s cabin where I learned-that he has gone to attend the felicitation function being held in honour of Shri Dixit on his promotion as D.M.D. in H.Q., at 4.30 p.m.

9. At the time of the incident, I was not aware that J.C. Mehrotra was A.P.(General Banking) or for that matter a Staff member. I thought him to be an outsider. I strongly deny any misbehaviour with Shri Mehrotra. Shri Gauri was not present at the time of the incident”.

9. The Division Bench in para Nos.30 to 33 of its judgment dated November 26, 2013 has held as under:-

“30. The only substantial charge that was required to be inquired into in the present case was with regard to the alleged misbehaviour of the respondent with his superior officer on 08.06.1983. The learned Single Judge has examined the inquiry proceedings

and has come to the conclusion that the Inquiring Officer had erred in not considering the defense of the respondent. The respondent had alleged that the Regional Manager had infact used abusive language and the exchange of words that ensued on that occasion was provoked by the abusive language used by the Regional Manager. The respondent had also produced a witness who has deposed that he was present in the office of the Regional Manager at the material time. The evidence of this witness (DW-I) has been rejected by the Inquiry Officer on the ground that other witnesses had not stated that he was present on the occasion and he could not give the correct location of the office. The said witness had in his cross examination stated that the office of the Regional Manager was located at the third floor of the office building and subsequently corrected as the same as being on the second floor. The Disciplinary Authority and the Appellate Authority have accepted the findings of the Inquiring Officer. Indisputably, Charges Nos. 8 and 9 which relate to the allegation of the respondent misbehaving with his superior officers are substantial and serious charges. The Inquiring Officer has examined several witnesses who were present in the regional office of the appellant on 08.06.1983 including the officers with whom the respondent is alleged to have misbehaved. The evidence of respondent was also recorded. The Inquiring Officer has disbelieved the defence witness and relied on the evidence produced by the prosecution. In the present case, the learned Single Judge has proceeded to re-examine and re-appreciate the evidence and has come to a conclusion that the defence evidence has been erroneously rejected by the Inquiring Officer. The learned Single Judge has also erroneously held that the respondent was not cross examined. This, in our opinion, is outside the scope of judicial review under Article 226 of the Constitution of India. A bare perusal of the records indicates that this is not a case where there was no evidence against the respondent

in respect of the alleged incident of 08.06.1983. Indisputably, there is material on record which could support the view that charge nos. 8 and 9 against the respondent were made out, the question as what weightage should be given to such evidence is not for this court to consider under Article 226 of the Constitution of India. A Constitution Bench of the Supreme Court in Union of India v. HC Goel: AIR 1964 SC 364 held that under :-

“23. In exercising its jurisdiction under Art. 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which dealt with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charges in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not.”

31. Following the ratio of the aforementioned decisions, it is apparent the approach of the learned Single Judge in re-examining and re-appreciating the evidence was erroneous. The Courts cannot supplant their views over the views of the Disciplinary Authority and the scope of judicial review in such cases is limited. Unless, the court finds that the decision of the Disciplinary Authority is mala fide or patently perverse or there is some manifest error in the decision making process, the courts would not interfere with the decision of the Disciplinary

Authority in proceedings under article 226 of the Constitution of India. In the present case, there is no procedural impropriety and the decision of the Disciplinary Authority or the Appellate Authority cannot be stated to be perverse. Thus, in our view, the impugned order inasmuch as it exonerates the respondent from charges nos.8 and 9 is concerned, cannot be sustained.

32. Having held that this court could not exonerate the respondent from charges no. 8 and 9, it would also be necessary to examine whether the punishment meted out to the respondent was disproportionate or arbitrary.

33. Although the behavior of the respondent with his superior officers on 08.06.1983 has been found to be derogatory, the language used cannot be stated to be filthy or abusive. Keeping in view, the fact that there is no allegation that the respondent had in the past 16 years of his service with the appellant bank had ever misbehaved or was given to exhibiting an abrasive behavior, the disciplinary action of removing the respondent from service would be disproportionate and most arbitrary”.

10. From the conclusion of the Division Bench, which has been upheld by the Supreme Court, the behaviour of the petitioner with his superior officers on June 08, 1983 has been found to be derogatory. The language used was not held as filthy. The Division Bench has also in para No.41 of the judgment upheld the view adopted by the disciplinary authority/appellate authority as not being perverse without any material evidence and also observed that such a view cannot be upset. Suffice to

state, while considering the writ petition qua the punishment now passed by the disciplinary authority against the petitioner, this Court must proceed on a premise that the charges 8 & 9 have been proved against the petitioner. The law with regard to judicial review on the penalty is well settled in terms of the judgment of the Supreme Court reported as **(2013) 10 SCC 106 Deputy Commissioner, Kendriya Vidyalaya Sangathan Vs. J. Hussain** and **(2008) 7 SCC 580 State of Meghalaya vs. Mecken Singh. N. Marak**, wherein it has been held that the Court would not interfere with the quantum of penalty/punishment unless the punishment imposed is shockingly disproportionate. The aforesaid position, infact is a reiteration of the position of law, in the case of **P.C.Kakkar** (supra), **Munnalal** (supra), **V.Ramana** (supra).

11. In P.C. Kakkar (supra), the Supreme Court has held as under:-

“11. 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.

12. To put it differently, 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 shorten 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.”

12. The case of the petitioner before the authority was the penalty should not be more than withholding of two increments. The disciplinary authority dealt with the issue in the following manner:-

“14. Xxxxx To observe that the Hon’ble Court has considered the case wherein Shri Mishra was a low paid employee of the Award Staff Union. It may be noted that the aforementioned penalty is highest in case of award staff employees where the severance of relationship with the employee is not mooted by the D.A/A.A. I note that Shri P.N Saluja was an officer in the State Bank where his role and status required him to be more dignified. Also, an officer is part of the managerial cadre and condoning of gross acts of indiscipline would lead to a complete destruction of the edifice on which the Bank administration stands.

15. Further, as per Para 41 of the above referred judgment, the Hon’ble Court has observed that ‘upsetting the decision of the Disciplinary Authority/Appellate Authority would not warranted. Further, the Hon’ble Court has opined that ‘the punishment of removal of service would be harsh and unreasonable in the given facts and circumstances of the case. Thus, I observe that the Hon’ble Court has not restricted the penalty in case of Shri P.N. Saluja to withholding of two increments. In this connection I also note that the Hon’ble Supreme Court while disposing the SLP (Civil) No.3346 of 2014 on

17.02.2014 had given verbal observation that the Bank under the impugned judgment of the division bench of the Hon. High Court is free to impose any penalty other than dismissal of removal from service.”

13. No doubt, the Division Bench in LPA 747/2012 has granted liberty to the disciplinary authority to pass appropriate penalty other than removal, it is still to be seen whether the penalty now imposed is justified/proportionate and in accordance with the rules.

14. It is noted that the penalty imposed on the petitioner is reduction to a lower stage in time scale of pay, whereby his pay was brought to the initial stage of JMGS-1 and fixing at Rs.700 with a further direction that he will not earn increments to pay till retirement. Such a penalty has the following effect. The petitioner's pay was reduced from Rs.1500/- to Rs.700/- and the future increments which he could have earn till his retirement i.e. 20 in number (as represented by the petitioner in para 6 of the synopsis) have also been stopped. Even though this aspect could not be answered by the respondent as no such plea was taken in the writ petition, still, noting, the age of the petitioner to be 72 years in 2015 (as per affidavit to the writ petition) he would have retired at the age of 60 years, in the year 2003. The penalty having the effect in the year 1985, still the petitioner had 18 years of service left, on the date of penalty, surely the penalty will have the effect of stopping 18 increments (till

retirement) apart from nullifying the increments, the petitioners earned between Rs.1,500-Rs.700 (the point at which the pay is reduced). Such a penalty till retirement is clearly disproportionate to the charge framed and proved and appears to effect other service benefits till the retirement. That apart, the penalty imposed is not in accordance with Rule 67(f). The said provision reads as under:-

“67. Without prejudice to any other provisions contained in these rules, any one or more of the following penalties may be imposed on an officer, for an act of misconduct or for any other good and sufficient reason to be recorded in writing:-

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(f) save as provided for in (e) above reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the officer will earn increments to pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay.”

15. A perusal of the Rule would also reveal that the reduction to a lower stage has to be for a specified period and not till the retirement, surely for 20/18 years. This I say so, on a reading of the Rule it is clear, more particularly when the Rule contemplates the authority to decide

whether during the reduction to a lower stage the officer will earn or not increments to pay. Further, the Rule stipulate on the expiry of such period the reduction will have the effect of postponing the future increments of his pay. It is apparent the Rule 67(f) does not contemplate imposition of penalty the manner in which it has been done. The penalty being not in accordance with Rule 67(f), the penalty imposed on the petitioner need to be set aside on this ground also.

16. Insofar as other judgments relied upon by the counsel for the respondent are concerned, in *Nand Kishore Shukla* (supra), the Supreme Court has held that the High Court cannot interfere with the order of removal on the ground that it was doubtful as to whether the disciplinary authority would have passed the order on the basis of a single charge. According to the Supreme Court, it is settled law that even if one of the charges if held proved and sufficient for imposition of penalty by the disciplinary authority or by the appellate authority, the Court would not interfere with that part of the order.

17. In *J.K. Synthetics Ltd.* (supra), the Supreme Court on the issue of quantum of punishment, a relief of reinstatement or for a normal lumpsum of compensation was directed.

18. Insofar as the submission of learned counsel for the respondent that the petitioner having accepted the benefits given to him after the

impugned order was passed, suffice to state merely receipt of the benefits on the basis of the penalty having been reduced to the one awarded in the impugned order will not amount to waiver of his rights. The benefits he had received are the one which he received on the basis of the penalty imposed. It was his case before the authority, at the most penalty of withholding of two increments can be imposed. Being aggrieved with the penalty, the petitioner was within his right to approach the Court.

19. The judgment relied upon by the learned counsel for the respondent in *Sanat Kumar Dwivedi* (supra) has no application as the same relate to an order of reinstatement without back wages. The Supreme Court was of the view that once the petitioner has accepted his reinstatement without back wages and joined the duties, under said circumstances he could not have sought the back wages.

20. Insofar as the judgment in *A.K. Bindal* (supra) is concerned, the same relates to the claim for revised pay after the officer had opted for voluntary retirement which was accepted by his employer. The Supreme Court held, once employee opt retirement under VRS and accept the benefits thereunder, their rights as employees come to an end and thereafter they cannot again assert their rights and reagitate their claim for pay revision. Such is not the case here. The petitioner has already stood retired. The benefits he had received were those which he would

have otherwise received in view of imposition of the penalty. There is no representation by the petitioner that he would accept the penalty and not challenge the same. The conclusion of the Court being that the penalty is disproportionate, the petitioner is justified in approaching this Court, challenging the penalty as arbitrary.

21. Having said so, I deem it appropriate to once again remand the matter to the disciplinary authority, who would pass a fresh order in proportionate to the charges framed and proved against the petitioner, more particularly keeping in view the penalties listed under Rule 67. The writ petition is allowed. The impugned order dated June 13, 2014 is set aside. The disciplinary authority shall pass a fresh order within 8 weeks from the date of receipt of certified copy of this order.

22. The writ petition is allowed on the aforesaid terms with costs of Rs.10,000/- to be paid to the petitioner.

(V.KAMESWAR RAO)
JUDGE

NOVEMBER 02, 2015
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