HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND
HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.14941 of 1995

Date:28.07.2016

Between:

G.R.Natarajan, S/o G.S.Ramaseshan,
Aged about 47 years, r/o.Tirupathi,
Chittoor District.

….. Petitioner

And

Chairman, State Bank of India,
Central Office, Bombay and others.

…..Respondents

The Court made the following:

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.14941 of 1995

PC: (Per the Hon'ble Sri Justice P.Naveen Rao)

Petitioner was an employee of the State Bank of India. While working in Junior Management Grade Scale-I, Charge Memo dated 02.07.1982 was

served on him containing six charges. Not satisfied with the explanation submitted by the petitioner, domestic enquiry was ordered. Enquiry Officer held charges 3, 5 and 6 as proved, and charges 1, 2 and 4 as partly proved. Considering the findings of the Enquiry Officer, the Disciplinary Authority vide order dated 24.12.1983 imposed punishment of removal from service. Along with the order of removal, the report of Enquiry Officer was furnished. Petitioner was also informed that copy of the proceedings of the enquiry was made available with the Branch Manager, Pulivendula Branch and he would be allowed to peruse the same and take notes therefrom. Appeal preferred by the petitioner was rejected. The review was also rejected vide order dated 06.03.1987. Assailing the order of the revisional authority, dated 06.03.1987 and to grant consequential prayer to reinstate the petitioner, petitioner instituted W.P.No.11056 of 1987. The said writ petition was disposed of by order dated 05.10.1994. Learned single Judge of this Court observed that the impugned order requires reconsideration in the light of *Shankar Dasu v. Union of India* [AIR 1985 SC 772] and permitted the petitioner to make a representation highlighting the particular reasons that the charges proved could not be considered to be grave and the punishment should be regarded as disproportionate to the charges established. Learned single Judge also made it clear that the order of the disciplinary authority as upheld by the reviewing authority would continue to operate. In terms thereof, petitioner filed fresh representation to the Review Committee. By order dated 21.12.1994, the Review Committee dismissed the review. Aggrieved thereby this writ petition is filed.

2. Heard Dr. K.Lakshmi Narasimha, learned counsel for petitioner and Smt. V.Umadevi, counsel, holding for Sri K.Srinivasa Murthy, learned standing counsel for respondents.

3. Dr K Lakshmi Narasimha, confined his submissions to following aspects.

3.1. Dr. K.Lakshmi Narasimha, would submit that report of the Enquiry Officer was not furnished to the petitioner before passing final orders in the disciplinary proceedings and straightaway punishment of removal was imposed. He would submit that petitioner was denied of reasonable

opportunity and procedure followed by the Disciplinary Authority is in violation of 'the State Bank of India Officers Service Rules' and principles of natural justice.

3.2. He would further submit that Enquiry Officer held charges 1, 2 and 4 as only partly proved. Not agreeing with the findings of the Enquiry Officer, on charges 1 and 2, Disciplinary Authority straightaway imposed the punishment of removal. Whenever there is disagreement with the findings of the Enquiry Officer, the Disciplinary Authority should record disagreement note and delinquent employee is entitled to supply of disagreement note along with the enquiry report and an opportunity to rebut the reasons of disagreement assigned by the disciplinary authority, before passing final orders. In the instant case, no such procedure was followed and, therefore, the same is vitiated and entire disciplinary proceedings are liable to be set aside on the said ground alone.

3.3. Dr. K.Lakshmi Narasimha would further submit that several grounds were urged by the petitioner in his appeal petition as well as in his revision petition. None of the grounds urged by the petitioner was considered by the Appellate Authority and Revisional Authority. The orders of the Appellate Authority and Revisional Authority are non-speaking orders. The disciplinary proceedings are quasi judicial proceedings and the appellate authority and revisional authority are required to assign reasons in support of their decision and reasons rejecting the grounds urged. Thus, the orders of the revisional authority and appellate authority are liable to be set aside on this ground also.

3.4. He would further submit that the Review submitted by the petitioner was considered by the incompetent authority. As per the service rules, Review Committee comprises of Chairman, Managing Director and Directors appointed under Sections 19(1)(f) and
19(1)(bb) of the State Bank of India Act,1955, whereas the revision filed by the petitioner was considered by two members, namely, Managing Director and President of Local Board. Thus, the order of the reviewing authority is no-nest in the eye of law as it was considered by illegally constituted

reviewing authority.

3.5. He would further submit that punishment imposed on the petitioner is disproportionate to the delinquency alleged and proved. There is no proof of misappropriation. The petitioner has sufficient justification and there is no truth in the allegations. All other allegations are trivial in nature. On the proved charges, punishment of removal was not warranted. Grave prejudice is caused to him and his family on account of harsh punishment. Petitioner and his family are subjected to lot of hardship all these years.

3.6. In support of his contentions, learned counsel for petitioner placed reliance on several decisions, as noted hereunder:

i) State of Punjab v. Amar Singh Harika[1];

ii) Union Bank of India v. Vishwa Mohan[2]; and

iii) S.P.Malhotra v. Punjab National Bank and others[3]

iv) Punjab National Bank and others v Kunj Behari Misra[4]

v) SBI and others v. Arvind K.Shukla[5]

vi) Punjab National Bank and others v. K.K.Verma[6]

vii) Narinder Mohan Arya v. United India Insurance Co.Ltd. and others[7]

viii) Municipal Committee, Hoshiarpur v. Punjab State Electricity Board and others[8]

ix) G.Vallikumari v. Andhra Education Society and others[9]

4.1. Smt V.Umadevi, learned standing counsel submitted that petitioner was involved in grave allegations including the allegation of misappropriation. The charges levelled against the petitioner were held proved. Based on the findings recorded by the enquiry authority and on detailed consideration of the charges levelled against the petitioner, the disciplinary authority has come to correct conclusion. She would further submit that procedure as envisaged by the service rules are strictly followed

and due opportunity was afforded to the petitioner.

4.2. The charges levelled against the petitioner are grave, including the allegation of misappropriation and, therefore, punishment of removal is validly made. In the light of the allegations levelled against the petitioner, which are held proved, it cannot be said that the punishment imposed is disproportionate warranting interference by this Court.

4.3. She would further submit that though report of the enquiry officer was not furnished to the petitioner prior to the imposition of punishment, petitioner was supplied with the copy of the report of enquiry officer and was in the knowledge of the contents of the report before he preferred the appeal. Petitioner had an opportunity to assail the report of the enquiry officer and the disagreement recorded by the disciplinary authority, but he failed to raise those contentions in the appeal as well as in the revision.

4.4. She would further submit that the punishment was imposed on the petitioner on 24.12.1983. The Constitution Bench of the Supreme Court in **Managing Director, ECIL, Hyderabad v. B.Karunakar and others** (supra), though held that non-supply of report of the enquiry officer before imposing punishment would amount to denial of reasonable opportunity and breach of natural justice, held that the said principle would apply prospectively from the date of the judgment and, therefore, it is no more open to the petitioner to pray to nullify the punishment imposed on this ground. At any rate, merely because there was procedural violation in imposing the punishment, does not automatically result in setting aside the order of punishment. Petitioner failed to discharge the burden as to how prejudice was caused to him on account of non-supply of report of enquiry officer prior to imposing of punishment, more so, when he did not protest in the appeal and revision. In the peculiar facts of this case and more so, petitioner had an opportunity to raise such contentions in the appeal, in the revision and before this Court in the earlier round of litigation, the punishment can not be set aside on this ground.

4.5. She would further submit that as per the directions of this Court in WP No.11056 of 1987, representation submitted by the petitioner was duly

considered and having regard to the gravity of the allegations held proved against the petitioner, the reviewing authority has not agreed with the plea raised by the petitioner to impose lesser punishment and, therefore, reiterated the punishment already imposed. She would submit that the scope of judicial review in disciplinary proceedings is very limited. Even in matters of disproportionate punishment, the Court can at the most remit the matter for consideration by the competent authority and as per the directions of this Court in the earlier writ petition, matter was considered and having regard to the gravity of the allegations, the punishment imposed was reiterated and, therefore, it is no more open for the petitioner to urge this Court to exercise powers of judicial review on the issue of proportionality of the punishment.

4.6. Learned counsel would submit that since the allegations are grave, punishment imposed is valid and petitioner is not entitled to any equitable relief.

4.7 Learned standing counsel placed reliance on the following decisions:

i) Managing Director, ECIL, Hyderabad and others v. B.Karunakar and others[10];

ii) Divisional Controller, N.E.K.R.T.C. v. H.Amaresh[11];

iii) General Manager (Operations) State Bank of India and another v. R.Periyasamy[12]

iv) Registrar General, High Court of Judicature of Madras v. K.Muthukumarasamy[13];

v) Union of India and others vs. P.Gunasekaran[14];

vi) Rajasthan State Road Transport Corporation and another v. Bajrang Lal[15];

vii) Union Bank of India v. Vishwa Mohan[16];

viii) Diwan Singh v. Life Insurance Corporation of India and others[17];

ix) State Bank of Patiala and others v. S.K.Sharma[18]

5. The point for consideration is whether the punishment is liable to be set aside on the ground that petitioner was not supplied the report of the Enquiry Officer and decision of deferment on findings of Enquiry Officer by Disciplinary Authority before imposing punishment and whether punishment is excessive?

6. As noted above, Dr. Lakshmi Narasimha, made elaborate submissions, placing reliance on several precedent decisions, on the issues of furnishing report of Enquiry Officer before passing final order by Disciplinary Authority and furnishing of disagreement note of Disciplinary Authority on findings of Enquiry Officer. We are afraid, we cannot appreciate this line of submissions, having regard to earlier round of litigation.

7.1. Challenging the order of the Revisional Authority, petitioner earlier filed W.P.No.11056 of 1987. The said writ petition was disposed of by order dated 15.10.1994. Though petitioner also raised the challenge to the punishment on the ground that the report of the Enquiry Officer was not furnished to the petitioner prior to the order of punishment, resulting in denial of adequate opportunity to explain his version before the punishment was imposed and the proceedings vitiate on that ground, a reading of the order would show that petitioner gave up said contention and sought for remanding the matter for consideration afresh by the Reviewing Authority on the issue of dis-proportionality of punishment as compared to the delinquency alleged and proved. Having regard to the said submission, the learned single Judge held that the concerned authority has not properly applied its mind to the question of appropriate punishment for the charges established, more so when specific grievance is made and direction was issued to the Reviewing Authority for reconsideration on the issue of proportionality of punishment.

7.2. At this stage, it is useful to extract the operative portion of the order. The order reads as under.

> ……..To this extent, I agree with the claim of the petitioner's counsel that the impugned order requires reconsideration in the light of **Shankar Das Vs. Union of India**. I, therefore, permit the petitioner to make a representation highlighting the particular reasons that the charges proved could not be considered to be grave and the punishment should be regarded as

disproportionate to the charges established. The representation should be made by the petitioner before the end of this month and the Reviewing Authority shall consider and dispose of the same before the end of December, 1994.

With this direction, the writ petition is disposed of. No costs. In the meanwhile, the orders of the Disciplinary Authority, as upheld by the Reviewing Authority, will continue to operate."

7.3. We cannot appreciate the contention of Dr. Lakshmi Narsimha that petitioner could not pursue the issue of non supply of report of Enquiry Officer in view of the legal position as obtaining on that day, since the order in W.P.No.11056 of 1987 would show that petitioner consented for remanding the matter to the Reviewing Authority for reconsideration of the punishment imposed on the principle of proportionality of punishment. Learned single Judge upheld the decision of the Disciplinary Authority as well as Reviewing Authority and only granted liberty to the petitioner to make a representation for reviewing the punishment imposed and to consider imposing lesser punishment. That decision binds the petitioner. On the aspect of establishment of delinquency, the issue has become final. The remand was to reconsider the question of punishment. Thus, even assuming that there is subsequent change in the legal position, it is not open to petitioner to plead to revisit the entire issue, more so, when no such leave was obtained from the Court in W.P. No. 11056 of 1987 and order in said writ petition has become final.

8.1. The following are the charges levelled, findings of the Enquiry Officer and views of Disciplinary Authority.

Charges	**F i n d i n g s of the Enquiring Officer**	**Opinion of the Disciplinary Authority**
i) You were frequently absenting yourself from duty unauthorisedly, causing avoidable inconvenience to the bank. Your above act is in violation of Rule No.40(1) of the State Bank of India (Supervising Staff) Service Rules by which you are governed.	Charge (i): That the official was unauthorisedly absenting himself from duty, (with the exception of one instance) <u>was proved.</u> **However, that part of the charge that his absence from duty had caused avoidable inconvenience to the Bank was held as <u>not proved</u>.**	Charge (i): It was proved in the Inquiry that the official was absenting for longer periods ranging between 1 5 to 30 days without prior sanction of leave. **His attending the Bank was unpredictable and his services were not available in the manner required, causing dislocation of the work. This amounts to causing avoidable inconvenience to the Bank. No further evidence is required to prove this part of the charges. I, therefore, disagree with the findings of the Inquiring Authority and hold the official guilty of the charge**.

ii) You were performing your official duties in a perfunctory manner, thereby exposing the Bank to grave risks;	Charge (ii): The charge that the official was performing his duties in a perfunctory manner was proved. **However, that part of the charge that the Bank was exposed to grave risks was held as not proved.**	Charge (ii): The charge relates to the basic procedures like checking the ledgers etc., in a perfunctory manner, which was proved. **It does not, therefore, stand to reason to hold that the Bank is not exposed to grave risks inspite of the official's perfunctory performance. I, therefore, disagree with the findings of the Inquiring Authority and hold the official guilty of the entire charge.**
iii) You made two spurious entries in the ledger sheets of Recurring Deposit Accounts 972 and 997 on the 11th November and the 4th November 1980, respectively, with an ulterior motive. You had, thus, falsified the Bank's records. Your above acts are in violation of Rule No.32 (4) of the State Bank of India (Supervising Staff) Service Rules by which you are governed.	Charge (iii): Proved	Charge (iii): I agree with the findings of the Inquiring Authority
iv) You caused negotiation of Savings Bank withdrawal orders without maintaining sufficient balance in your Savings Bank Account maintained with our Pulivendla Branch. Your above acts are in violation of Rule Nos.42(1) and 32(4) of the State Bank of India (Supervising Staff) Service Rules by which you are governed.	Charge (iv) : Proved with the exception of one instance out of six, mentioned in the statement of allegations.	Charge (iv) : I agree with the findings of the Inquiring Authority
v) You had borrowed money from a person having dealings with the Bank and placed yourself under pecuniary obligation in violation of Rule No.41(1) of the State Bank of India (Supervising Staff) Service Rules by which you are governed.	Charge (v): Proved.	Charge (v): I agree with the findings of the Inquiring Authority
vi) You had temporarily misappropriated amounts aggregating Rs.300/- belonging to Dr. L.Subba Reddy and sent through his representative, Shri S.V.Ramana Reddy, on two occasions, for credit of R.D. Account 2/838 towards the instalments for the months of October and November, 1980. You had not only failed to deposit the amounts in the Bank on the respective dates but also made spurious entries in the relative pass book tendered by Shri Ramana Reddy under your authentication. When the matter came to light, you approached Dr. L Subba Reddy and settled the matter by refunding the amount to him. Your above act is highly unbecoming of a Bank Official - an act in violation of Rule No.32(4) of the State Bank of India (Supervising Staff) Service Rules by which you are governed	Charge (vi): Proved.	Charge (vi): I agree with the findings of the Inquiring Authority

8.2. Charges 3, 5 and 6 held as fully proved and charge 4 to an extent of five out of six instances. As can be seen from the above table, the Disciplinary Authority agreed with the findings of the Enquiry Officer insofar as the charges 3 to 6 are concerned, but, he took a different view with reference to the second limb of the findings against charges 1 and 2 and imposed punishment of removal from service.

8.3.1. In the charges 1 and 2, there are two limbs of allegations.

8.3.2. First limb of charge no.1 is unauthorisedly absenting from the duty, and second limb of the allegation is causing avoidable inconvenience to the Bank. Enquiry Officer held second limb as not proved. The Disciplinary Authority disagreed with the said finding holding that if the employee is unauthorisedly absent, and is unpredictable on attending to duties, it would certainly cause avoidable inconvenience to the Bank.

8.3.3. With reference to the 2nd charge, the fist limb of the charge is performance of official duties in perfunctory manner and thereby exposed the Bank to grave risk. Here also, the first limb of the charge is proved and second limb is not proved. The Disciplinary Authority disagreed with this finding also holding that once the performance of the duties are found to be perfunctory, certainly Bank would be exposed to grave risk.

8.3.4. It is thus seen that the second limb of the allegations in both the charges are consequential and once first limb of charge is proved, ordinarily, it would follow that the employee is guilty of the second limb. To arrive at this finding, no new material was relied and based on the Banking procedures and the material on record, such conclusion can be arrived.

8.3.5. Bare perusal of the charge memo would show that more serious allegations are in charge nos. 3 to 6 and first limb of charges 1 and 2. Sum and substance of the allegations in the 3rd charge is petitioner made two spurious entries in the ledger sheets of Recurring Deposit Accounts. In the charge No.4, it is alleged that the petitioner caused negotiation of Savings Bank withdrawal orders without maintaining sufficient balance in his Savings Bank Account. In charge No.5, it was alleged that petitioner

borrowed money from the person having dealings with the Bank and placed himself under pecuniary obligation. Charge No.6 deals with grave allegation i.e., petitioner temporarily misappropriated amounts aggregating Rs.300/- of the money belonging to customer, on two occasions and while failing to deposit the amount in the concerned account, he also made spurious entries in the relevant passbook.

8.3.6. Even otherwise, ignoring the second limb of both the charges, the first limb of first two charges and charges 3 to 6 are grave enough and once they are proved, they would attract harsh penalty. Thus, it cannot be said that difference on two minor aspects of charges would impact the nature of punishment. Petitioner admits of refund of misappropriated amount along with interest to the customer. Thus, in the circumstances, it cannot be said that punishment visited against petitioner is disproportionate.

8.3.7. In this context, it is also to be noted that on the issue of quantum of punishment, this Court directed the reviewing authority to reconsider the punishment if a representation is made. On such reconsideration, the earlier punishment is upheld. In matters of imposing appropriate punishment, the jurisdiction of Writ Court is in a narrow compass. In a proved misconduct what punishment can be imposed should be best left to the employer. In banking sector, where trust plays vital role any amount of misdemeanor can have serious impact on the credibility of the Bank. Furthermore, in a given case an allegation of unauthorized absence may result in removal from service. Thus, in the facts of this case, it cannot be said punishment imposed is excessive and it cannot be said there was improper exercise of power.

8.3.8. It is also to be noted that in W.P. No. 11056 of 1987, while upholding the orders of the Appellate Authority and Reviewing Authority, Court gave liberty to petitioner to prefer representation on quantum of punishment and directions were issued. It was seriously contended that quorum to decide petitioner's review was not in accordance with Rules. In the facts of this case, we are not persuaded to remit the matter for fresh consideration. First, the direction issued was for consideration of

representation on quantum of punishment and therefore it is not a case of exercise of regular reviewing power and second, the order of Appellate authority and Reviewing Authority have been upheld in W.P. No. 11056 of 1987. Thus, disciplinary action attained finality and only issue remained for consideration was quantum of punishment; third, disciplinary action relates back to 1982 and in exercise of equity jurisdiction, we need not set aside order under challenge at this stage even if there is merit in the contention on the composition of reviewing committee, more so when employer's stand is firm on punishment imposed, as reflected in orders of hierarchy of officers and the averments in the counter/additional counter; and lastly, we are not persuaded to agree with the contention of petitioner that punishment imposed is excessive/disproportionate to delinquency alleged and proved.
As we are not called upon to decide the validity of rule in question, no opinion is expressed.

9. We see no merit in the writ petition. Writ Petition is accordingly dismissed. Miscellaneous petitions, if any, stand dismissed. No costs.

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DILIP B. BHOSALE, ACJ

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P.NAVEEN RAO, J

Date:28.07.2016
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[1] 1966 0 AIR (SC) 1313
[2] (1998) 4 SCC 310
[3] (2013) 7 SCC 251
[4] (1998) 7 SCC 84
[5] (2004) 13 SCC 797
[6] (2010) 13 SCC 494
[7] (2006) 4 SCC 713
[8] (2010) 13 SCC 216
[9] (2010) 2 SCC 497
[10] (1993) 4 SCC 727
[11] (2006) 6 SCC 187

[12] (2015) 3 SCC 101

[13] (2014) 16 SCC 555

[14] (2015) 2 SCC 610

[15] (2014) 4 SCC 693

[16] (1998) 4 SCC 310

[17] (2015) 2 SCC 341

[18] (1996) 3 SCC 364