

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 1125 of 2012**

- H.S. Bhatia S/o Shri Hakam Singh Bhatia Aged About 65 Years Ex Asst. Manager State Bank Of India R/o Budhwari Para Ps Dongargarh Distt. Rajnandgaon Cg

---- Appellant**Versus**

1. State Bank Of India Through Its Chairman Corporate Central State Bank Bhawan Madam Cama Road Mumbai (MS)
2. Assistant General Manager Regional Officer State Bank Of India Region No. 4 Dharampura Road Jagdalpur (CG)
3. Deputy General Manager (Disciplinary Authority) State Bank Of India Zonal Officer Shanakar Nagar Raipur (CG)
4. General Manager (D&PB) (Appointing Authority) State Bank Of India Local Head Officer Bhopal (MP)
5. Chief General Manger (Appellate Authority) State Bank Of India Local Head Office Bhopal (MP)
6. The Reviewing Authority, Appeals & Review Department State Bank Of India Corporate Centre State Bank Bhawan Madam Cama Road Mumbai (MS)

---- Respondents

For Appellant : Mr. K.R. Nair, Advocate
 For Respondents : Mr. P.R. Patankar, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice**Hon'ble Shri Sharad Kumar Gupta, Judge****Order On Board****Per Thottathil B. Radhakrishnan, Chief Justice****02.08.2017**

1. We have heard the learned Counsel for the appellant and the learned

Counsel for the respondents.

2. The appellant was an Assistant Manager in the respondent- State Bank India. On an allegation as to alleged misappropriation of funds from the account maintained by one Somnath with the Respondents, disciplinary proceedings were initiated against the writ petitioner. The Enquiry Authority concluded that the delinquent had not committed any count of indiscipline. The Disciplinary Authority, disagreeing with the findings of the Enquiry Authority, handed down the penalty of dismissal. That was carried in appeal. That appeal was rejected. An institutional review also turned futile. Hence the appellant instituted the Writ Petition. That was dismissed, therefore, this Writ Appeal.
3. Had the appellant been in service, he would have superannuated in 2007. The dismissal order was issued on 22.10.2003. That order also deprived the delinquent of any benefit of the period during which he was under suspension, except subsistence allowance. While the delinquent challenged the order of dismissal through the Writ Petition, we see that there is no specific challenge to that part of the decision of the Disciplinary Authority whereby he was inflicted with the decision that the period spent under suspension will not be treated as duty and he would not earn any financial benefit that would have accrued by way of increment and other add-ons had he continued in service.
4. Three aspects loom large in favour of the delinquent. Somnath, whose account was allegedly abused, had gone on record with different affidavits. During the enquiry, he supported the delinquent. He appears to have given a contrary affidavit while the matter was pending before the Disciplinary Authority. This person, apparently with

a changeable taffeta, had also given an earlier affidavit during the preliminary enquiry which apparently contradicted the other two affidavits. The credibility of the versions of Somnath was something which was wholly unacceptable to common course of human conduct and institutional prudence. The other material that was sought to be taken for consideration was the report of the hand writing expert. An important factor of this case is that the Enquiry Authority after assimilating all facts, factors and materials concluded in favour of the delinquent and held that none of charge is proved. With the materials on record, if the Disciplinary Authority were to revert the findings of the Enquiry Authority, that would obviously have been an uphill task. Resultantly, even if the Disciplinary Authority has disagreed with the Enquiry Authority and had come to a different conclusion pointing to the guilt of the delinquent, that by itself was a factor that should have weighed with the Disciplinary Authority in moulding the penalty that ought to have been handed down, particularly when the divergent version of Somnath, is something which had no credence and that was not worth acceptance. Therefore, even if the Disciplinary Authority had disagreed with the Enquiry Authority and had concluded that the delinquent was guilty, the totality of the facts and circumstances essentially show that the delinquent ought not to have been handed down anything more than an order of compulsory retirement even by sustaining the Disciplinary Authority's decision not to treat the period under suspension as duty for all purposes. Within our limitations as jurisdictional review of penalties and sentences in such matters, we are of the firm view that in the light of the materials that are available before us through the paper book, the penalty imposed on the appellant delinquent is so unreasonable and disproportionate to

whatever allegation could be treated as proved on the face of Somnath's divergent versions. The penalty handed down is exorbitant and shocking to conscience, that it tends to be something that could be characterised as perverse or arbitrary to be visited on the touchstone of Article 14 of the Constitution of India.

5. For the aforesaid reasons, we are of the view that the learned Single Judge had not addressed the issues pointedly on the facts and factors of the case in hand though different precedents have been referred to. The delinquent appellant was entitled to an order of converting Annexure A11 (R9) penalty order to be one of compulsory retirement with effect from 22.10.2003, the date on which Annexure A11 was handed down.
6. In the result, this Writ Appeal is allowed in part and the impugned judgment by the learned Single Judge is vacated. It is directed that the order Annexure A11 (R9) shall be treated as one only for compulsory retirement in terms of Rule 67(f) of the State Bank of India Officers' Service Rules, 1992. Consequential benefits due to the appellant, including monetary benefits, shall be worked out and released to the appellant within an outer limit of 3 months from the date of receipt of copy of this judgment. No costs.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge