HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Appeal No.986 of 2015

Judgment: (per V.Ramasubramanian, J.)

The management of the Bank of India has come up with the present writ appeal challenging an order of the learned Single Judge passed in a writ petition filed by the respondent herein, modifying the penalty of compulsory retirement into one of reduction of two annual increments with cumulative effect.

2. We have heard Mr. K.Lakshminarayana, learned counsel for the appellants/Bank and Mr. M.Jagga Rao, the respondent appearing in person.

3. When the respondent was working as a Branch Manager in the Middle Management Grade-III in one of the branches of the bank at Visakhapatnam, disciplinary proceedings were initiated against him with the issue of a charge memo dated 02-3-2009. The charge memo contained two articles of charges. In brief, the 1st article of charge alleged that the respondent, along with another officer of the branch, accommodated a person by name K.V. Appala Naidu, by entertaining the loan applications of 5 different persons who were related to him, ignoring the fact that all the Units were registered with the District Industries Centre as SSI Units on a single day, after the submissions of the loan applications and ignoring various other factors and also

disbursing the entire sanctioned limit in cash amounting to Rs.2.40 Crores. It was further alleged that though the loans were sanctioned to 5 different Units, Appala Naidu was allowed to withdraw the entire loan amount.

4. Article 2 of the charge memo alleged that the respondent recommended jointly with another officer of the branch, a clean demand loan of Rs.50 lakhs to one person against equitable mortgage of a commercial property belonging to the sons of the borrower and that while doing so, he overlooked, the fact that the gross annual income of the borrower for the year 2004-05 was only Rs.1.19 lakhs, when the EMI was fixed at Rs.2.84 lakhs.

5. An enquiry followed, in which the Senior Manager of the Zonal Office was examined as M.W.1, the Senior Manager (Investigation) was examined as M.W.2 and the Senior Branch Manager of the Branch in which the respondent was working was examined as M.W.3. A total of 132 documents were marked as Exts-M.1 to M.132..

6. The respondent examined the Cashier-in-charge as D.W.1 and examined himself as D.W.2 and marked 58 documents as Exts.D-1 to D-58.

7. The Enquiry Officer submitted a report dated 06-01-2010 holding that many components of article 1 of the charge are proved and a few components not proved. Similarly, the Enquiry Officer also held the whole of the 2nd article of charge proved except only one component.

8. After furnishing a copy of the enquiry report and giving an opportunity to the respondent to furnish a reply, the Disciplinary Authority passed an order dated 23-4-2010, imposing the penalty of 'compulsory retirement'.

9. The statutory appeal filed by the respondent was dismissed by an order dated 03-6-2011.

10. Challenging the order of penalty, the respondent filed a writ petition W.P.No.25646 of 2010. The said writ petition was allowed by the learned Single Judge setting aside the penalty of 'compulsory retirement' but imposing the penalty of reduction of two annual increments with cumulative effect and also directing the Management to treat the period of suspension as duty with continuity of service. It is against the said order that the Management is before us.

11. It is seen from paragraph 9 of the impugned judgment that having regard to the materials brought on record in the course of the domestic enquiry, the learned Judge came to the conclusion that the respondent did not take requisite care in recommending the loans. The learned Judge affirmed that there were lapses on the part of the respondent and that the respondent cannot be totally exonerated of the charges for which he was found guilty.

12. Nevertheless, the learned Judge found in paragraph 10 of his judgment that in cases of this nature where the other officers were also involved, a common enquiry ought to have been conducted and that the conduct of a separate

disciplinary proceeding prejudiced the case of the respondent to some extent.

13. After holding so, the learned Judge accepted another contention in paragraph 11 of his judgment that in the matter of imposition of penalty, the Management did not follow consistency. Therefore, on the basis of the judgment of the Supreme Court in *Rajendra Yadav v. State of M.P.*[1], the learned Judge held that the doctrine of equality ought to be applied to the case of the respondent.

14. In fine, the learned Judge allowed the writ petition partly, mainly on two grounds, namely, (a) that the respondent was treated differently from other officers in the matter of penalty and (b) that in any case, the respondent recovered all the sanctioned loan amounts together with interest at 8% per annum, immediately upon being put on notice of the irregularities in the matter of grant of loan.

15. Therefore, the issue that arises for consideration is whether the learned Judge could have interfered with the quantum of penalty, merely on the ground of Article 14 of the Constitution of India and on the basis of the alleged recovery of the loan amounts.

16. As we have pointed out earlier, the learned Judge did not interfere with the finding of guilt recorded by the Enquiry Officer with respect to the charges. On the contrary, the learned Judge held in paragraph 9 of his judgment that

---

[1] 2013 (2) SCALE 416

there were lapses on the part of the respondent and that the respondent did not take requisite care in recommending the loans.

17. The jurisdiction of this Court under Article 226 of the Constitution of India is not akin to the jurisdiction of the Labour Court under Section 11A of the Industrial Disputes Act, 1947. Even a Labour Court cannot interfere with a finding recorded in the domestic enquiry, unless it holds that the enquiry was vitiated or unless the Labour Court holds the findings to be perverse.

18. The learned Judge has not recorded any finding anywhere in his judgment that the findings of the Enquiry Officer were perverse. Interestingly, the learned Judge did not even hold that the imputations of misconduct proved against the respondent did not belong to the realm of grave charges but belong only to the realm of very minor lapses.

19. Once the enquiry report is found to be not perverse, the scope of interference with the order of penalty, is very limited, especially in a writ petition under Article 226 of the Constitution of India. This Court does not have the power to modify the order of penalty, except perhaps in extreme situations where the disproportionality is so shocking to the conscience of the Court that it cannot be allowed to stand even for a minute. Therefore, the interference by the learned Judge, with the order of penalty, after having chosen to sustain the findings, is not in accordance with law.

20. In *State Bank of India v. Narendra Kumar Pandey*[2], the Supreme Court reiterated the view expressed in *State Bank of India v. Ramesh Dinkar Punde* [*(2006) 7 SCC 212*] to the effect that the High Court cannot reappreciate the evidence as if it is a Court of appeal. The Court also pointed out, relying upon its earlier decision in *State of Andhra Pradesh v. Sree Rama Rao* (*AIR 1963 SC 1723*) that where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court under Article 226 of the Constitution of India to review the evidence and arrive at an independent finding.

21. Even on the question of proportionality, the learned Judge could not have suggested any lesser penalty. As could be seen from the charge memo, the 1st charge is very grave and serious in nature. It revolves around the sanction of loans to 5 different persons at the instance of one K.V. Appala Naidu who was also related to them. Two specific allegations made in the 1st article of charge, are very very serious in nature. The first is that the respondent claimed to have conducted inspections of the Units before the sanction of the loan, along with two other officers. But it transpired later that the Units did not exist at those places. Another serious allegation is that the entire loan amount of Rs.2.40 Crores

---

[2] (2013) 2 SCC 740

sanctioned at the rate of Rs.48 lakhs each for the 5 applicants, was allowed to be withdrawn in cash by one person. These are not mere lapses which the management of a bank can ignore especially on the part of a managerial cadre employee. The Units to which loans were sanctioned, were themselves registered as SSI Units just two days after the submission of loan application and one day prior to the recommendation made by the respondent for sanction. Therefore, there are issues which do not fall in the realm of negligence or procedural lapses. The Supreme Court has repeatedly pointed out that an officer who puts public money to grave risk, by sanctioning loans in violation of the procedure prescribed, may have to be dealt with severely. Even officers found guilty of kite flying operations were shown the door. Therefore, the learned Judge was not right in interfering with the penalty of compulsory retirement, imposed upon a managerial level employee, when the charges alleged against him are very serious.

22. The contention that a common enquiry ought to have been conducted, has no legs to stand. The charges made against the respondent were specific with reference to the role played by him. Therefore, the learned Judge was not correct in holding that a common enquiry ought to have been held.

23. The respondent, appearing as a party-in-person relied upon the fact that he himself was called as a management witness to testify in the departmental enquiry

against another officer by name D.V.S.K. Murthy. Therefore, he contended that when a group of officers are allegedly involved, making one of them a witness in the proceedings against another, a common enquiry was mandatory.

24. But we do not think so. If a common enquiry had been held, the charged officers would have been pitted against one another as witnesses. This would have resulted in each pulling the leg of the other and extracting incriminating statements, which would have been taken exception to at the time of imposition of the penalty. Therefore, the contention regarding common enquiry is unsustainable.

25. As rightly contended by the learned counsel for the appellant, the charge-sheeted officers belonged to different scales ranging from Scale-II to Scale-VI in the managerial cadre. Therefore, the irregularities committed by each one of them were different. The degree of misconduct accordingly varied from person to person and hence the question of equality does not arise.

26. The reliance placed upon the decision of the Supreme Court in *Rajendra Yadav*, is totally misplaced. In the said case, the appellant before the Supreme Court was working as a Police Constable. There was an enquiry against another Constable also. The enquiry report revealed that it was the other Police Constable who demanded and received money, though with the tacit approval of the appellant before the Supreme Court. The Supreme Court found that the

charge levelled against the other Police Constable was more serious in nature, than the charge against the appellant. Therefore, the Supreme Court relied upon its previous decision in *Director General of Police v. G.Dasayan* [*(1998) 2 SCC 407*] to interfere with the penalty.

27. But in the case on hand, there was no comparison made by the learned Judge, between the charges framed against every one of the officers, the findings recorded in respect of those charges and the penalty eventually imposed upon each one of them. In such circumstances, the learned Judge could not have modified the order of penalty and allowed the respondent to have a reward.

28. As a matter of fact, in *Obettee (P) Ltd. v. Mohd. Shafiq Khan* [*(2005) 8 SCC 46*] the Supreme court took a view that even if the nature of misconduct committed by two sets of employees is the same, the imposition of different punishments may be justified depending upon their conduct.

29. In *Lucknow K. Gramin Bank v. Rajendra Singh*[3], the Supreme Court noted the decision in *Obettee (P) Ltd. v. Mohd. Shafiq Khan* [*(2005) 8 SCC 46*] and thereafter summed up in para 16 of its judgment in *Lucknow K. Gramin Bank*, the principles that could be evolved by a harmonious reading of the decisions in *Obettee (P) Ltd.* and *Rajendra Yadav*. These principles are as follows:

---

[3] (2013) 12 SCC 372

"16. This, according to us, would be the harmonious reading of *Obettee (P) Ltd.* and *Rajendra Yadav* cases.

The principles discussed above can be summed up and summarized as follows:

(a) 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;

(b) 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;

(c) 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;

(d) 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.

(e) The only exception to the principle stated in para (d) above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct was 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 concerned employee 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 co-delinquent accepts the charges, indicating remorse with unqualified apology lesser punishment to him would be justifiable."

If these principles are applied, it will be clear that the case of the respondent would not come anywhere near the same.

30. In view of the above, the judgment of the learned Judge interfering with the order of penalty cannot be sustained. Hence, the writ appeal is allowed and the impugned order is set aside. The miscellaneous petitions, if any, pending in this writ appeal shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

G.SHYAM PRASAD, J.

27th January, 2017.
Ak

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Appeal No.986 of 2015
(per VRS, J.)

27th January, 2017.
(Ak)