

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition No. 6175 of 2006****Reserved on 03.01.2019****Delivered on 08.01.2019**

A. P. Singh S/o late Sheovaran Singh, aged about 54 years, former Branch Manager, Central Bank of India, presently residing at 42/1042, Devnanadan Nagar, Phase-1, Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. Central Bank of India through its Branch Manager, Branch Bhuabichhiya, District Mandla, Madhya Pradesh
2. Zonal Manager – cum-Disciplinary Authority, Central Bank of India, Zonal Office, Raipur, Chhattisgarh
3. General Manager-cum-Appellate Authority, Central Bank of India, Mumbai Metropolitan Zonal Office, 346, Standing Building, Dr. D. N. Road, Fort, Mumbai-400023
4. Central Bank of India through its Regional Manager, Regional Office, Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Abhyuday Singh, Advocate
For Respondents	:	Shri B. D. Guru, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board**

1. Aggrieved by the penalty of dismissal from service which shall ordinarily be a disqualification for future employment dated 09.08.2005 Annexure P-12 and the subsequent order dated 07.06.2006 Annexure P-14 whereby the departmental appeal preferred by the petitioner also stood rejected, the petitioner has filed the present writ petition seeking quashment/setting aside of the

impugned order of punishment and the order passed by the Appellate Authority.

2. Shorn of unnecessary details, the material facts relevant for adjudication of the present writ petition are that the petitioner was working as a Branch Manager with Central Bank of India. That at the relevant point of time, he was posted at Bhua Bichhiya, District Mandla. The petitioner was served with a charge sheet alleging 3 misconducts on 25.1.2004. There were 3 major charges levelled against the petitioner in the said charge sheet. The first charge was that the petitioner unauthorizedly remained absent from duty on 23rd and 24th of January, 2004. The second charge was that the petitioner did not have any control over the functioning of two satellite branches of the respondents at Anjanimal and Naijhar and that no proper record of cash was handed by the in charge of those satellite offices which is contrary to the norms of the respondents. The third charge levelled against him was that the petitioner had allowed transaction at base office, Bhua Bichhiya even when the satellite branches were functional. The petitioner gave response to the said charge sheet which according to the respondents was not satisfactory and therefore they ordered for holding of a departmental enquiry.
3. During the course of enquiry, the respondents examined as many as 5 witnesses and exhibited 20 documents. So far as the petitioner is concerned, on his behalf 2 witnesses were examined and he produced as many as 10 documents. After conclusion of the proceeding, the Enquiry Officer submitted his report Annexure P-10 dated 02.06.2005 to the Disciplinary Authority holding that the 3 charges levelled against the petitioner stood proved. Based on the

enquiry report, the Disciplinary Authority passed the impugned order of punishment Annexure P-12 dated 09.08.2005. While imposing punishment, the Disciplinary Authority held as under:

“In the background, I am of the candid opinion that ends of natural justice will meet if following punishments are awarded for the three charges held as proved in the enquiry with which I have concurred.

Charge No.1: Dismissal which shall ordinarily be a
disqualification for future employment.

Charge No.2: Reduction of one increment in the time scale of
pay for a period of one year.

Charge No.3: Reduction of one increments in the time scale of
pay for a period of three years.

As such, I am awarding a consolidated punishment of - “DISMISSAL, WHICH SHALL ORDINARILY BE A DISQUALIFICATION FOR FUTURE EMPLOYMENT” in terms of 4 (j) of Central Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976.”

4. The petitioner thereafter preferred an appeal to the appellate authority under the respondents. However, while preferring the appeal, the petitioner had confined his appeal to the punishment imposed by the Disciplinary Authority so far as charge no.1 is concerned i.e. the punishment order that was inflicted for charge nos. 2 & 3, the petitioner was not aggrieved and he had not questioned or challenged the finding of the Enquiry Officer on those charges as also the punishment so inflicted for those two charges by the Disciplinary Authority. The Appellate Authority in turn on due consideration of the proceeding vide its order dated 07.06.2006 affirmed the punishment for charge no.1 which has led to the filing of the present writ petition.

5. The contention of the learned counsel for the petitioner assailing the two impugned orders was that the punishment so imposed by the Disciplinary Authority was without proper appreciation of the evidences which had come before it. Accordingly to the petitioner, there was sufficient material before the Enquiry Officer to show that the petitioner was in fact not unauthorizedly absent from duty for those two days but it was a case where the petitioner reported at the branch on both the dates and thereafter he had left the branch for some official field work which therefore cannot be considered as unauthorized absent from duty. This fact was also substantially proved by way of documents which were produced during the course of enquiry yet the enquiry officer gave a finding of the charge standing proved and which has been accepted by the Disciplinary Authority and inflicted with the capital punishment of dismissal from service having disqualification from future employment. It was further contention of the petitioner that the impugned orders are bad in law for the reason that the punishment for charge no.1 is highly disproportionate, unreasonable and arbitrary and considering the nature of misconduct, a lesser punishment other than the dismissal from service should have been imposed by the Disciplinary Authority. According to the counsel for the petitioner, since charge no.1 is only in respect of absent from duty on 23rd and 24th of January, 2004, the same may not be treated as so grave a misconduct which should warrant such a severe punishment of dismissal from service and the Management should have taken a lenient view and for this reason also the impugned order deserves to be interfered with.

6. Per contra, Shri B. D. Guru, counsel appearing for the respondents opposing the petition submits that the enquiry report by itself is self explanatory in as much as the charges which were levelled against the petitioner were found to be proved and taking into consideration the entire nature of misconduct and the conduct of the petitioner, the punishment was imposed and it is a consolidated punishment for all the charges which stood proved in the enquiry. Since the petitioner himself has not challenged the finding of charge nos. 2 & 3, it is implied that the petitioner admits of having committed the same. Thus, there is hardly any scope for interference with the punishment as prayed for by the petitioner.
7. So far as charge no.1 is concerned, according to the counsel for the Bank, even from the explanation and the defence that has been taken by the petitioner it stands established that the petitioner was not available at Branch on both the dates i.e. on 23rd and 24th of January, 2004 during the banking hours which again establishes the charge. That for this reason also, the punishment imposed by the Disciplinary Authority and which has been affirmed by the Appellate Authority does not warrant any interference by this Court. According to the counsel for the respondents, the finding of the Enquiry Officer is based on materials brought before the Enquiry Officer during the enquiry proceedings as also on the basis of the evidences recorded. It was the contention of the respondents that the finding of the Disciplinary Authority has been thoroughly reconsidered by the Appellate Authority who has affirmed the order of punishment. Thus, there has already been a scrutiny done of the punishment order by the Appellate Authority which further reduces the scope of interference by this Court in a disciplinary proceeding. According to

the respondents, this Court would not sit over the finding of the Disciplinary Authority as also the Appellate Authority as a second appellate body and prayed for rejection of the writ petition.

8. Having heard the contention put forth on either side and on perusal of the record, the entire issue stands confined to charge no.1 i.e. the petitioner being absent from duty on 23rd and 24th of January, 2004. The allegation against the petitioner was that the petitioner's home town was Durg and therefore the petitioner used to unofficially leave the Branch on Friday and return back only on Monday. He used to remain absent from the Branch on Friday and Saturday. Perusal of the record would show that 23rd and 24th of January, 2004 was also Friday and Saturday. The substantive allegation/charge against the petitioner is that he was absent from duty on these two days.
9. Coming to the evidences which have been led by the Management, there have been witnesses who have deposed before the Enquiry Officer that on both these days the petitioner was not available at the Branch during the banking hours. Though one of the witnesses has deposed that on 23rd morning the petitioner came to the Branch, marked his attendance and then left. So far as 24th is concerned, there is no material of the petitioner having even come to the Branch except for his oral submission and defence that he had come to the Branch before other staffs had come and left the Branch also for field work before other staffs came for duty. The defence of the petitioner before the enquiry officer is that on both these dates he had come to the Branch and thereafter left for official field work. Therefore he was not available at Branch during the working hours.
10. What is pertinent to take note is that though the petitioner has tried to produce certain documents to show that he had met certain

persons in respect of recovery of loans during these two days but the petitioner has failed to produce a single person before the Enquiry Officer who could have stated of the petitioner having met him on those two days. On the contrary, there have been statements recorded by the Management witnesses who have categorically deposed of the petitioner not being available at the Branch on both these two days.

11. From the aforesaid evidences led by either side, the fact which is not in dispute is that on both these dates, during banking hours, the petitioner was not available in the branch. Further, none of the employees or officers posted at the Branch during the said period has deposed that the petitioner had intimated them before leaving Branch for official field work. Neither is there any deposition by any of the witnesses which would establish that the petitioner left the Branch intimating the next senior most person in the branch and to take care of the banking transactions during the said dates in his absence, coupled with the fact that the petitioner also has not been able to adduce any evidence of any of those persons whom he had met on 23rd and 24th of January, 2004 in respect of the official banking business.
12. The aforesaid factors by itself force this Court to accept the finding of the Enquiry Officer to be the finding of fact based on evidences. The fact that 23rd and 24th January, 2004 being Friday and Saturday and the allegation of the petitioner having the tendency of leaving Branch for his home town on Friday and not attending the duties on Friday and Saturday stands strengthened.
13. It is settled position of law that the High Court in exercise of its power under Article 226 of the Constitution of India would not

interfere with a conclusion of a Disciplinary Authority unless the finding is not supported by any evidence. The High Court can interfere with a finding if the conclusion arrived at by the Enquiry Officer and the Disciplinary Authority could be said to be one on which no reasonable person could have reached to such a finding. The scope of interference under Article 226 of the Constitution of India in a disciplinary proceeding is only a supervisory jurisdiction and the High Court cannot substitute itself as another appellate body or an appellate Court. In a disciplinary proceeding, the High Court would only look into the decision making process and not the decision itself. The High Court is not a Court of appeal under Article 226 of the Constitution of India over the decisions of the Disciplinary Authority in respect of a punishment order inflicted upon an employee/officer.

14. Right from the landmark decision of the Hon'ble Supreme Court in the case of **B. C. Chaturvedi V. Union of India, AIR 1996 SC 484** it has been settled by the Supreme Court that a decision of the Disciplinary Authority which has also been tested by the departmental Appellate Authority becomes finding of fact and the said authorities have been conferred upon the exclusive power to consider the evidences which have come before the Enquiry Officer and to take an appropriate decision to maintain discipline in the establishment for which they can pass appropriate punishment keeping in view the magnitude and gravity of the misconduct. The Supreme Court in the said judgment clearly held that while exercising power of judicial review, the High Court cannot normally substitute its own conclusion of penalty and impose some other penalty. The same view was taken by the Supreme Court again in the case of

Union of India v. G. Ganayutham, AIR 1997 SC 3387 and in very categorical terms held that the Courts would not interfere with the decision taken by the Disciplinary Authority on the administrative side unless it was illegal or suffered from procedural impropriety or was irrational, outrageous, in defiance of logic and moral standards.

15. What cannot be lost sight is that the petitioner is an officer of banking sector. Banks otherwise are also considered to be sensitive place and are the trustee of the public money. Therefore, the employees/officers who are posted in the banking sector are required to exercise high standard of integrity and honesty so far as discharge of duties are concerned. Every officer/employee of a bank is required to take all possible steps to protect the interest of the bank with utmost devotion and diligence. Good conduct and discipline are inseparable functioning of every officer/employee of a bank and he is not supposed to do anything which is unbecoming of a bank officer.

16. Coming to the facts of the present case, from the defence of the petitioner himself it stands established that he was not present in the Branch during the working hours on both the dates. There is no evidence to show that the petitioner was discharging his duties in the field on the said dates in as much as no witness in this regard has been examined. At the same time, the petitioner is said to have also taken allowances for having worked in the field on the said dates which further all the more increases the gravity of misconduct and also reflect the character and integrity of the officer. The very discipline of an organization particularly the banking sector is dependent upon each of the officers and employees parting within the allotted sphere. Acting beyond one's authority and in breach of

banking norms and regulations itself is an act of indiscipline which would squarely be brought within the ambit of misconduct.

17. One should not forget that being absent from duty for some justifiable reason with cogent proof in respect of his absence is entirely different than remaining unauthorizedly absent from duty and also encashing allowances for the said period of absent when in fact the employee/officer had not discharged any official work or at least there is no evidence in this regard and at the same time projecting absence from the bank because of working in the field is different.
18. In the given factual matrix of the case and the legal position as it stands, this Court does not find any strong case made out by the petitioner calling for an interference with the impugned order of punishment and the order of the appellate authority.
19. Coming to the second ground of the order of punishment being highly disproportionate and unreasonable, this court is of the opinion that considering the nature of duty which the petitioner was otherwise discharging and the evidence which has come before the Enquiry Officer, it cannot be said that the finding of the Enquiry Officer is contrary to the evidence on record or the finding was one which could not have been arrived at by a prudent person under the normal circumstances. Interfering with a punishment order on the ground of proportionality can be only if it is shocking to the conscience. It would also be disproportionate if the nature of allegation is not one which warrants a punishment of dismissal or where the charge or the misconduct levelled is too trivial and the misconduct may not be one which could be said to be a major misconduct. When the fact of the present case is compared, what is apparent is that there were three

charges which were levelled against the petitioner. All the three charges stood proved by the Enquiry Officer and which was accepted by the Disciplinary Authority and which was also conferred by the Appellate Authority. Charge no.1 being the gravest of all was that of the petitioner in spite of being a Branch Manager left the Branch without any intimation to any officer superior or inferior on two consecutive dates i.e. 23rd and 24th of January, 2004. A Branch Manager leaving the Branch in such a manner cannot be said to be an act which is too trivial or a minor misconduct. There are evidences which have brought before the Enquiry Officer that there was a tendency on the part of the petitioner of leaving the Branch on Fridays and not attending the Branch on Saturdays as he used to proceed to his home town at Durg on every Friday unofficially. Under the circumstances, it cannot be said that the punishment inflicted by the Disciplinary Authority to be either disproportionate or unreasonable nor can it be said to be shocking to the conscience.

20. The citation referred by the petitioner so far as the punishment being disproportionate and for interfering with the punishment on the ground of proportionality, this Court on due consideration of the facts of those judgments is of the opinion that the nature of allegation in all those cases were not as serious a misconduct as in the present case. Therefore those judgments are distinguishable on its facts itself and would not come to the rescue of the petitioner calling for an interference with the impugned orders.

21. Consequently, the writ petition fails and is accordingly rejected.

Sd/-
(P. Sam Koshy)
JUDGE