

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3246 of 2016****Reserved on : 08/05/2019****Delivered on : 25/06/2019**

Ajay Hariharno S/o Late Smt. Veena Hariharno, R/o Infront Of
Alok Sadan, New Deepak Nagar, Durg, Chhattisgarh,
Chhattisgarh.

---- Petitioner**Versus**

Up Mahaprabandhak / Apealiya Adhikari, Bhartiya State Bank
Prasasanik Office, Bairan Bazar, Raipur, Chhattisgarh,
Chhattisgarh.

---- Respondent

For Petitioner	:	Petitioner in person.
For Respondent/s	:	Mr. Prafull N. Bharat along with Mr. P. R. Patankar, Advocates.

Hon'ble Shri Justice P. Sam Koshy**CAV Order**

1. The present writ petition has been primarily filed challenging the order Annexure (P-5) dated 26.02.2016. The present is a second round of litigation. The petitioner on an earlier round of litigation had challenged the order of termination and order of suspension and rejection of the appeal by departmental appellate authority vide writ petition No. 250/2012. The said writ petition finally stood disposed off on 20.11.2015 and High Court disposed off the writ petition in the following terms, the relevant portion of which is reproduced hereinunder :-

“19. In the result, while no interference is called for in so far as finding of proof of charge No.1 is concerned, it has to be held that the respondents have failed to prove charge No.2 & 3 in accordance with law. The penalty of

dismissal from service has been imposed on the petitioner by the respondents on the basis that charge No.1 & 3 is proved and charge No.2 is partly proved.

20. In view of the aforesaid finding and conclusion of this Court, only Charge No.1 has been found to be proved, as a consequence, the appellate authority is required to examine whether proof of Charge No.1 is, by itself, sufficient to impose extreme penalty of dismissal from service. Therefore, for this limited purpose, the matter is remanded to the appellate authority to re-consider the aspect of proportionality of punishment on the basis of proof of charge No.1. The appellate authority shall examine the aspect after taking into consideration all the relevant material including proportionality of punishment and shall reconsider on the basis of charge No.1 alone and take fresh decision with regard to quantum of punishment on Charge No.1. This shall be considered by the appellate authority within a period of three months from the date of first appearance of the petitioner before the appellate authority along with certified copy of this order."

2. Brief facts necessary for adjudication of the present writ petition is that the petitioner while working as Senior Assistant at Branch, Bemetara of the respondent- State Bank Of India was subjected to disciplinary proceedings on certain charges of serious misconduct. The petitioner was issued with a charge-sheet on 07.07.2010. The petitioner thereafter replied to the same on 17.07.2010. Not satisfied with the reply/explanation provided by the petitioner, respondents took a decision of conducting departmental enquiry against the petitioner. An enquiry officer was appointed in this regard who in turn submitted his report on 03.02.2011. The enquiry officer found Charge No. 1 & Charge No. 3 to have been proved and charge No. 2 to have been partly proved. The petitioner thereafter issued with a second show cause notice to which also petitioner submitted his explanation and relying upon the enquiry report,

the disciplinary authority vide order dated 22.07.2011 dismissed the petitioner from the services of the respondent Bank.

3. The petitioner preferred a departmental appeal against the order of dismissal from service and the appellate authority also vide order dated 28.11.2011 rejected the appeal of the petitioner and in the process affirmed the order of dismissal passed by the disciplinary authority. The petitioner challenged the order of disciplinary authority as well as the order of appellate authority vide Writ petition No. 2520/2012 which was partly allowed and disposed off on 20.11.2015. The relevant portion of which has already been reproduced in the initial paragraphs of this judgment. Subsequent to the disposal of the writ petition the matter was placed again before appellate authority to take a decision in the light of the order passed by High Court on 20.11.2015. The appellate authority after due consideration of the directives given by this Court and also taking note of the factual matrix of the case as it came before the enquiry officer during the course of the enquiry have passed an impugned order on 26.02.2016 modifying the order of dismissal imposed upon the petitioner and looking to the misconduct so committed by him imposed the punishment of Removal from service with all superannuation benefits i. e. Pension or Provident fund and Gratuity with disqualification from further employment. Though, the petitioner-in-person had argued on various grounds assailing the impugned order but the crux of the appeal was to the effect that the appellate authority concerned have not properly appreciated the evidence which have come on record. Likewise, it was also argued that the finding of the disciplinary authority as also the finding of the enquiry officer in the enquiry report were contrary to the evidence and as such was a

perverse finding of fact. The petitioner also tried to canvass the aspect that since the High Court on earlier round of litigation charge No. 2 & Charge No. 3 have not been proved or established. Charge No. 1 not being that grievous a misconduct, the authorities ought to have recalled the order of dismissal and should have inflicted the petitioner with a lesser punishment. It was also the contention of the petitioner that the appellate authority ought to have considered the entire service record of the petitioner while determining whether it was necessary to inflict the petitioner with a punishment of dismissal from service.

4. According to the petitioner charge No. 1 on which the respondent authorities ought to have applied their mind was only pertaining to erroneous /wrong posting made by the petitioner. Moreover, since the account holder has not been put to loss neither was the Bank put to any sort of financial loss, the punishment of dismissal from service is one which is not sustainable. It was also the contention of the petitioner that it was not the first time that such an incident occurred in the banking business rather according to the petitioner it is one which usually happens and subsequently it is rectified. However, with malafide intentions, the respondents have deliberately taken a serious note of the alleged erroneous posting that the petitioner had made and passed the impugned order. According to the petitioner it is noting but a case where petitioner has been made a scape goat. In support of his contentions, the petitioner had relied upon the judgments (2001) 3 SCC 314 and 2012 (5) MPHT 62. Finally the petitioner prayed for quashment of the impugned order dated 26.02.2016 and allowing of the writ petition by setting aside the impugned order and thereafter prays for passing for an appropriate suitable order.

5. Per contra, Shri Prafull N. Bharat along with Shri Padmanabh Patankar representing the State Bank of India submitted that since it is the second round of litigation, the scope of judicial review by this Court has got reduced substantially and it is only a very limited area left for this Court to scrutinize the impugned order dated 26.02.2016. According to counsel for the respondent since there is a categorical finding that charge No. 1 has been held to have been proved by the High Court in the previous round of litigation, there is nothing further left for the High Court to go into the charge and evidence which has come on record to hold that the charge has been proved or is not proved. The scope of reviewing the charge No.1 is not sustainable in the light of the clear verdict given by this Court in the earlier petition filed by the petitioner. According to the counsel for the respondent after the High Court having remanded the matter to the appellate authority for deciding the matter afresh the appellate authority has in turn scrutinized the entire facts and circumstances of the case as also the appeal and after making a fresh assessment of the evidences that have come on record and also after due perusal of records has modified the order commensurate the gravity to the misconduct and has modified the punishment to the extent that dismissal from Bank's service has been revised to removal from service with all superannuation benefits i.e. pension or provident fund and gratuity as would be due to the petitioner without disqualification from any future employment. Referring to the impugned order dated 26.02.2016 counsel for the Bank submitted that appellate authority having after due consideration finally modified the earlier order of dismissal and have passed a fresh order, the scope of interference by the Court in writ

jurisdiction gets further reduced and the impugned order being a speaking order does not deserve to be interfered with and the writ petition deserves to be rejected. According to the respondent reading of the impugned order would clearly reflect that the appellate authority has taken into consideration the aspect of trust, betrayal, honesty and integrity of a person working with the Banking industry and have also dealt with the aspect of losing faith in the employee.

6. Having heard the arguments put forth on either side and on perusal of records particularly the judgment passed by this High Court in the case of petitioner in the earlier round of litigation, what is undisputed is that,

(a) The petitioner was dismissed from service vide order dated 22.07.2011.

(b) The petitioner was dismissed after a thorough departmental enquiry that was conducted.

(c) There were three charges levelled against the petitioner and of the three charges, Charge No. 1 & 3 were fully proved and charge No. 2 was partly proved.

(d) The writ Court at the first instance vide its judgment dated 22.11.2015 held that the finding of the enquiry officer so also the disciplinary authority so far as the charge No. 2 and 3 is concerned was erroneous.

(e) The High Court in very categorical terms held that the respondent i.e. the Bank has failed to prove charge No. 2 & 3. So far as the charge No. 1 is concerned, the finding this High Court was that no interference was called for so far as the finding of proof of charge No. 1 is concerned. That is to say the High Court has reached to the conclusion that charge No. 1 stood fully proved.

7. So far as the charge No. 1 is concerned, it would be relevant to take note of charge No. 1 at this juncture for better appreciation of facts. For ready reference charge No. 1 is reproduced hereinunder :-

“Charge No. 1 :

He posted, by the debiting account No. 10563772176 of Chhattisgarh Rajya Bijli Board (CSEB), Durg, the cheque No. 114060 for Rs.61,153/- on 07.01.2009 and credited the amount to the account No. 30599019299 of Shri Prabhat Kumar Singh, through his own ID, whereas the CSEB informed that the said cheque for the amount was not issued by them.”

8. Now what is left for consideration by this Court is whether the directions given by this Court vide its judgment dated 22.11.2015 has been properly appreciated and whether subsequent decision taken by the appellate authority vide his order dated 26.02.2016 is proper, legal & justified. It is pertinent to mention at this juncture that this High Court in the earlier round of litigation when it partly allowed the writ petition did not set aside or quash the order of dismissal. Thereby, the decision of the disciplinary authority was not disturbed by this High Court at the first instance. The High Court had only remanded the matter to the appellate authority to reconsider whether on proving of charge No. 1 alone is sufficient to impose penalty of dismissal from service. Based on the aforesaid, the appellate authority has passed the impugned order dated 26.02.2016. Now whether the appellate authority has applied his mind while passing the impugned order or not. It would be necessary to go through the order that has been passed by the appellate authority. For ready reference, the operative part of the order is reproduced hereinunder :-

“Hence, in pursuance of the order of Hon'ble High Court, I have carefully gone through the relevant material on record and various communications in its entirety, considering the Charge No. 1 alone, that is, “ He posted, by the debiting account No. 10563772176 of Chhattisgarh Rajya Bijli Board (CSEB), Durg, the cheque No. 114060 for Rs.61,153/- on 07.01.2009 and credited the amount to the account No. 30599019299 of Shri Prabhat Kumar Singh, through his own ID, whereas the CSEB informed that the said cheque for the amount was not issued by them” as proved.

It is pertinent to emphasize that Banking is a highly sensitive instrument of finance and credit, which entails that the public must repose the fullest confidence in the Bank and in turn in its staff. The Bank has lost faith in Shri Ajay Hariharno. However, in view of the order of the Hon'ble High Court, I am inclined to revise the punishment from “**Dismissal from Bank's Service**” in terms of Memorandum of Settlement dated 10.04.2002 and also Para No. 6(a) of SBI, LHO, Bhopal Circular No. CirDo/P&HRD/57 of 2002-2003 dated 06.08.2002 to “**be removed from service with superannuation benefits (i.e. Pension and /or Provident Fund and Gratuity) as would be due otherwise (under the Rules or Regulations prevailing at the relevant time) and without disqualification from future employment**” in terms of Memorandum of Settlement dated 10.04.2002 and also Para No. 6(b) of SBI, LHO, Bhopal Circular No. CirDo/P&HRD/57 of 2002-2003 dated 06.08.2002 governing his service in the Bank. I order accordingly.”

9. The plain reading of the aforesaid contents of the appellate authority it is revealed that the appellate authority has taken note of the allegation of the petitioner misusing his capacity as

an employee of the Bank and illegally crediting an amount of Rs. 61,153/- against the cheque allegedly issued by CSEB, Durg who in turn had informed that the said cheque for the amount was not issued by it. Keeping this in mind the appellate authority took into consideration the aspect of loss of faith in the employee/officer and also took note of the fact that respondent being a banking industry, it is the element of trust, honesty and integrity which is paramount required from the employees/officers of the Bank as it is public money which is involved in the banking business and unless the employees and officers discharge the duty with utmost sincerity, trust and faith, the banking industry would not be able to sustain.

10. Supreme Court in a judgment reported in (1997) 4 SCC page 565 in the case of **Tara Chand Vyas Vs. Chairman & Disciplinary Authority and Others** dealing with the manner in which an employee and officer of a banking business should work. The relevant portion is reproduced hereinunder :-

“The nationalised banks, therefore, are the prime source and pillars for establishment of socio-economic justice for the weaker sections. The employees and officers working in the banks are not merely the trustees of the society, but also bear responsibility and owe duty to the society for effectuation of socio-economic empowerment. Their acts and conduct should be in discharge of that constitutional objective and if they derelict in the performance of their duty, it impinges upon the enforcement of the constitutional philosophy, objective and the goals under the rule of law. Corruption has taken deep roots among the sections of the society and the employees holding public office or responsibility equally became amenable to corrupt conduct in the discharge of their official duty for illegal

gratification. The banking business and services are also vitally affected by catastrophic corruption the disciplinary measure should, therefore, aim to eradicate the corrupt proclivity of conduct on the part of the employees/officers in the public offices including those in banks. It would, therefore, be necessary to consider, from this perspective, the need for disciplinary actions to eradicate corruption to properly channelise the use of the public funds, the live wire for effectuation of socio-economic justice in order to achieve to constitutional goals set down in the Preamble and to see that the corrupt conduct of the officers does not degenerate the efficiency of service leading to denationalisation of the banking system. What is more, the nationalisation of the banking service was done in the public interest. Every employee/officer in the bank should strive to see that banking operations or services are rendered in the best interest of the system and the society so as to effectuate the object of nationalisation. Any conduct that damages, destroys, defeats or tends to defeat the said purpose resultantly defeats or tends to defeat the constitutional objectives which can be meted out with disciplinary action in accordance with rules lest rectitude in public service is lost and service becomes a means and source of unjust enrichment at the cost of the society.”

11. Dealing with the scope of judicial review in disciplinary proceedings relating to employee working in banking industry, the Supreme Court in the case of **Lalit Popli v. Canara Bank and others, AIR 2003 SC 1796**, in paragraph in paragraph 20, the Supreme Court held as under :-

“As noted above, the employee accepted that there was some lapse on his part but he pleaded lack of criminal intent. A bank employee deals with public money. The nature of his work demands vigilance with the inbuilt

requirement to act carefully. Any carelessness invites action.”

12. A similar view was also taken by the Supreme Court in the case of **Regional Manager, U. P. SRTC, Etawah and Others Vs. Hoti Lal & Another, (2003) 3 SCC 605**, wherein the Supreme Court in paragraph 10 has held as under :-

“It is not only the amount involved but the mental set up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, highest degree of integrity and trustworthiness is must and unexceptionable.”

13. A same view has been reiterated by the Supreme Court in the case of **U.P State Road Transport Corporation, Dehradun Vs. Suresh Pal, (2006) 8 SCC 108 & Uttar Pradesh State Road Transport Corporation Vs. Pradeep Kumar, (2016) 15 SCC 122**.

14. Dealing on the issue of proportionality of punishment or the quantum of punishment, the Supreme Court in the case of **Divisional Controller, KSRTC (NWKRTC) Vs. A. T. Mane, (2005) 3 SCC 254** in paragraph 12 & 13 held as under :-

“12. Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into

consideration. In our opinion, when a person is found guilty of misappropriating corporation's fund, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal.

13. This Court in the case of B.S. Hullikatti (supra) held in a similar circumstances that the act was either dishonest or was so grossly negligent that the respondent therein was not fit to be retained as a conductor. It also held that in such cases there is no place for generosity or misplaced sympathy on the part of the judicial forums and thereby interfere with the quantum of punishment.”

15. Again in the case of **U.P. State Road Transport Corporation Vs. Suresh Chand Shrama, (2010) 6 SCC 555**, Supreme Court dealing with the issue of proportionality and quantum of punishment has taken a similar view placing reliance upon the judgment passed in the case of **Divisional Controller, N.E.K.R.T.C. Vs. H. Amaresh, (2006) 6 SCC 187 & U.P. State Road Transport Corporation Vs. U.P. State Road Transport Corporation Vs. Vinod Kumar, (2008) 1 SCC 115**.

16. Taking into consideration the aforesaid judgment and the law that has been laid down by the Supreme Court all along, it cannot be said that the decision taken by the Appellate authority while passing the impugned order dated 26.02.2016 modifying the punishment from dismissal from service to removal from service to be in any manner bad in law, arbitrary, disproportionate to the gravity of the misconduct.

17. The writ petition fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge