

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 7222 OF 2020

With

CAN 1 of 2020

Vikash Kumar

Vs.

United Bank of India & Ors.

For the Petitioner : Mr. Soumya Majumdar,
Mr. Samrat Dey Pauladvocates

For the UBI : Ms. Parna Roy Chowdhury
.....advocate

Reserved on : 20.01.2023

Judgment on : 17.03.2023

Hiranmay Bhattacharyya, J.:-

1. The writ petitioner was an Officer of United Bank of India (for short "UBI"). The petitioner was removed from service by an order of the Disciplinary Authority dated 29.09.2018 while he was posted at Begusarai branch of UBI. The said order stood affirmed by the order of the Appellate authority dated 24.07.2019. The writ petitioner has prayed for quashing of the orders passed by the aforesaid authorities and has prayed for

his reinstatement in service with full back wages and other consequential benefits.

2. Facts giving rise to this writ petition in a nut shell are as follows:

The writ petitioner joined his office at Begusarai branch of UBI on 09.02.2013 upon being transferred from Purnea branch. The petitioner claims that he could not attend office on and from 11.12.2013 on account of his serious illness which fact is alleged to have been communicated by the petitioner to the concerned Branch Manager. The petitioner further claims to have expressed his willingness to join his duties by way of electronic mails and by writing letters but the authorities of UBI did not respond to such prayers of the petitioner. Petitioner also claims to have submitted leave applications and the medical reports and certificates to prove that he was suffering from severe ailments. Petitioner was served with a letter dated 15.12.2017 containing the Articles of charges. The Enquiry Officer submitted his report dated 24.05.2018 holding that the charges leveled against the petitioner/ Charge Sheeted Officer (for short "CSO") are proved. The Disciplinary authority, by an order dated 29.09.2018, imposed the Major Penalty of "Removal from service which shall not be a disqualification for future employment". The appellate authority by an order dated 24.07.2019 affirmed the order of the Disciplinary authority.

3. Being aggrieved against the orders of the aforesaid authorities, the writ petitioner has approached this Court.
4. Mr. Majumdar, learned Counsel appearing in support of the writ petition contended that the writ petitioner applied for sick leave which was not responded to by the UBI. Even the requests made by the petitioner to join his duties were also not replied to. Therefore, it was contended by Mr. Majumdar that, petitioner cannot be held liable for unauthorised absence at least with effect from 04.10.2014. Mr. Majumdar also drew the attention of the Court to a document to support his argument that the higher authorities did not communicate their decision on the prayer for resumption of duties though the same was forwarded to such authorities. He also contended that the authorities have neither disputed the fact of illness of the petitioner nor rejected the reports and certificates submitted by the petitioner by assigning cogent reasons. Mr. Majumdar concluded by submitting that the punishment of removal from service is highly disproportionate as the absence from duty was due to medical ground and not a deliberate act and also that the alleged misconduct was the first allegation of misconduct.
5. Ms. Roy Chowdhury, learned advocate representing the respondent Bank seriously disputed the contentions of Mr. Majumdar. She contended that the petitioners remained absent from duties on and from 11.12.2013 without sanction

of leave or prior permission from the authority. She vehemently contended that the petitioner did not join his duties in spite of several opportunities being granted to him. Therefore, the authority was compelled to issue the letter containing Articles of charges etc. Thereafter, the Enquiry Officer conducted the inquiry in accordance with law and held that the charges have been duly proved. The Disciplinary authority issued the penalty order which was affirmed by the appellate authority.

6. Ms. Roy Chowdhury placed reliance upon the decisions of the Hon'ble Supreme Court of India in the case of *State Bank of India vs. Ram Lal Bhaskar and Anr.* reported at (2011) 10 SCC 249 to highlight the limited scope of interference against the order of the disciplinary authority in exercise of the power of Judicial Review. She also relied upon another decision of the Hon'ble Supreme Court in the case of *State of Uttar Pradesh and Anr. vs. Man Mohan Nath Sinha and Anr.* reported at (2009) 8 SCC 310 in support of the aforesaid contention.
7. Heard the learned advocates for the parties and perused the materials placed.
8. Before proceeding to adjudicate the issues raised in this writ petition it would be relevant to take note of the decisions of the Hon'ble Supreme Court of India defining the scope of judicial

review against the orders passed by the disciplinary authorities.

9. The Hon'ble Supreme Court in *Ram Lal Bhaskar* (supra) and *Man Mohan Nath* (supra) after noticing several decisions of the Hon'ble Supreme Court held that in a proceeding under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the findings of the disciplinary authority. The High Court also cannot reappreciate the evidence and come to a different and independent finding on the evidence so long as the findings of the disciplinary authority are supported by some evidence.
10. The Hon'ble Supreme Court in the case of *High Court of Judicature at Bombay vs. Shashikant (S). Patil* reported at (2000) 1 SCC 416 after noticing the decisions of the Hon'ble Supreme Court in the case of *State of Andhra Pradesh vs. S. Sree Rama Rao* reported at (1963) SC 1723 and *B.C.Chaturvedi vs. Union of India* reported at (1995) 6 SCC 749 restated the grounds of judicial review. The Hon'ble Supreme Court restated the grounds of judicial review as follows:-
 - (a) Whether there has been a violation of the principles of natural justice; or
 - (b) the proceedings have been held in violation of statutory regulations prescribing the mode of such enquiry; or

(c) the decision is vitiated by considerations extraneous to the evidence and merits of the case; or

(d) if the conclusion made by the authority is ex facie arbitrary or capricious that no reasonable person could have arrived at such conclusion; or

(e) any other grounds similar to the above.

It was also reiterated therein that if there was some legal evidence on which the findings could be based then adequacy or even reliability of such evidence would be outside the pale of judicial review.

11. Keeping the aforesaid legal propositions in mind this Court shall now proceed to decide the issues raised in this writ petition.
12. The first charge against the petitioner was that the petitioner was guilty of unauthorised absence since 11.12.2013 in utter disregard to the Bank's norms and guidelines without any leave being sanctioned in his favour.
13. The second charge against the petitioner was that he failed to join Begusarai branch till the date issuance of the Articles of charges in spite of being advised to join thereby defying the lawful and reasonable instructions of the superiors/ competent authority of the Bank.
14. Record reveals that show cause notice was issued to the petitioner and the reply thereto being unsatisfactory, the Articles of charges

etc. was served upon the petitioner. Petitioner was advised to submit his written statement of defence within a stipulated time frame. An Enquiry Officer was appointed to inquire into the alleged misconduct. The writ petitioner/ CSO was given an opportunity to defend his case by the Departmental Representative. However, the CSO chose to defend the case by himself. During the enquiry proceeding several documents produced by the Management were exhibited and it is not in dispute that the copies of those documents were also handed over to the CSO. The documents produced by the CSO during the inquiry were also marked as exhibits.

15. The Enquiry Officer took into consideration the oral as well as documentary evidences and observed that the CSO remained unauthorisedly absent since 11.12.2013 without any leave being sanctioned by the competent authority. By referring to the evidences on record it was further observed that several letters had been issued by the Bank asking the CSO to join his duty along with satisfactory explanation for his authorised absence. The Enquiry Officer, after considering the replies sent by CSO against the Bank's letters found the explanation not satisfactory and observed that CSO willfully avoided to join duty citing the medical exigency. The Enquiry Officer thus, concluded that all the charges leveled against CSO are proved.
16. Upon going through the Enquiry Report dated 24.05.2018, this Court is of the considered view that the disciplinary authority was

right in observing that the enquiry proceeding was conducted in accordance with the principles of natural justice.

17. The Disciplinary Authority after taking into consideration the medical certificates submitted by the CSO observed that the medical certificates issued by different Doctors, Kabiraj and Vaidya on different occasions declared the CSO fit to resume his duties and despite that he did not resume his duties. The learned counsel for the petitioner, however, could not controvert such factual finding.
18. The explanation offered by the CSO for not joining his duties was found to be unsatisfactory and was not accepted by the Bank by citing cogent reasons therefor. Accordingly the disciplinary authority found that CSO willfully avoided to join the duty in the ruse of medical exigency and thus committed misconduct by not complying with the directions issued by the Bank. It was further observed by the disciplinary authority that the act of indiscipline of CSO affected the urgent business related matters of the Bank besides causing hindrances in day to day functioning of the Bank.
19. The writ petitioner preferred an appeal against the order of the disciplinary authority. It appears from the order dated 24.07.2019 that the appellate authority took into the consideration the grounds raised by the writ petitioner in the appeal petition against the order of the disciplinary authority and after considering the same rejected the appeal petition by assigning cogent reasons.

20. Mr. Majumdar has not questioned the orders passed by the disciplinary authorities on the ground of procedural impropriety. By referring to the charges leveled against the petitioner, Mr. Majumdar would contend that the bank has unnecessarily prolonged the period of absence of the petitioner from duty by not allowing the petitioner to join his duties in terms of his prayer for permission to join vide letter dated 04.10.2014.
21. It is evident from the documents annexed to the writ petition that the Chief Manager UBI, by a letter dated 28.04.2014 informed the petitioner that he is not attending his duties since 11.12.2013 without any prior permission and/or sanction of leave and as such his absences have been treated as unauthorised. By the said letter CSO was directed to resume duties and submit explanation for absenting from duty. The CSO was again advised by the Bank by a letter dated 08.05.2014 to join office. Bank thereafter issued another letter dated 13.07.2015 informing the CSO that he is absent without permission from 11.12.13 which tantamounts to gross misconduct. By the said letter the CSO was again advised to join his duties. By another letter dated 07.08.2015, the CSO was asked to join immediately with medical certificate for the total period of absence.
22. It is not in dispute that the CSO did not join his duties despite several opportunities being granted to the CSO to join his duties. It is also not in dispute that the medical certificates submitted by the CSO did not cover the entire period of absence.

23. The submission of Mr. Majumder that the petitioner was ready and willing to join his duties with effect from 04.10.2014 is, however, contrary to the representation of the petitioner dated 22.12.2015. In the said letter the petitioner claimed that he was on medical leave for the period from 12.12.2013 to 22.12.2015 and was not able to perform his duty. The petitioner claims to have submitted several medical certificates for the period from 12.12.2013 to 22.12.2015 in support of his claim that he was not able to perform his duties on medical grounds for the entire period. Though the petitioner claims that he was ready and willing to join his duties with effect from 04.10.2014 but it appears from the list of medical certificates mentioned in the letter dated 22.12.2015 that the petitioner also submitted a medical certificate covering the period from 20.05.2014 to 30.11.2014. Thus, when the petitioner himself claimed in the representation dated 22.12.2015 that he was not able to perform his duties during the period from 12.12.2013 to 22.12.2015, this Court is unable to accept the submission of Mr. Majumdar that the period after 04.10.2014 cannot be treated as the period of unauthorised absence. That apart the petitioner in the representation dated 22.12.2015 claimed that he was on medical leave but the petitioner did not produce any document to show that medical leave was sanctioned by the competent authority in his favour.

24. Therefore, in the absence of any document to show that leave was sanctioned in favour of the CSO or that he obtained prior

permission for not attending the duties on medical ground, the disciplinary authority was right in holding that the CSO was guilty of unauthorised absence.

25. After going through the materials on record and the orders passed by the disciplinary authority as well as the appellate authority this Court is of the considered view that the petitioner failed to demonstrate that any matter extraneous to the evidence and the merits of the case was taken into consideration by the authorities while passing the impugned orders. It also cannot be said that no reasonable person could have arrived at such conclusions as that arrived at by the disciplinary authorities. Since the findings were based on some legal evidence, this Court is not inclined to interfere with the orders passed by the disciplinary authority and the appellate authority which held that the charges against the petitioner has been proved.

26. Mr. Majumdar would contend that punishment of removal from service is highly disproportionate as the absence from duty was due to medical ground. It is well settled that the doctrine of proportionality is recognised as one of the facet of judicial review. Once the charge of misconduct stands proved it is within the exclusive domain of the disciplinary authority to quantify the punishment. However, it is now judicially recognised that if such discretionary power is exercised and the punishment awarded is grossly in excess to the proved misconduct, such exercise of discretionary power by the disciplinary authority is open to judicial

intervention even under the limited scope of judicial review. The Court while exercising the powers of judicial review has to consider whether the disciplinary authority took into consideration the measure, magnitude and degree of misconduct and all other relevant circumstances and excluded the irrelevant matters before imposing punishment.

27. In the case on hand it has been proved that the CSO was in unauthorised absence for the period from 11.12.2013 till 15.12.2017 i.e., the date of issuance of the articles of charge. Thus, the period of unauthorised absence was for a period of over 4 years. CSO did not join his duty despite several opportunities being granted to him to join as observed hereinbefore which amounted to disregarding the lawful and reasonable instructions of the superior officers. The CSO thought that he could claim medical leave as a matter of right and join his duties as per his sweet will. CSO issued a letter expressing his intention to join and also submitted a medical certificate to show that he was not able to perform his duties during the relevant period. This is nothing but gross violation of discipline by an Officer of the Bank.

28. The Hon'ble Supreme Court in the case of *North Eastern Karnataka Road Transport Corporation vs. Ashappa* reported at (2006) 5 SCC 137 after observing that remaining absent for a long time cannot be said to be a minor misconduct and held that habitual absenteeism can be a valid ground for dismissal of an employee from service. The Hon'ble Supreme Court in the said reported decision took note of

the conduct of the delinquent that instead of being given opportunities to resume his duties, he remained absent for a considerable period of time.

29. The disciplinary authority inflicted a punishment of removal from service instead of a more harsh punishment of dismissal from service which would be a disqualification from future employment. After taking into consideration the gravity of the charges which has been proved and the decision of the Hon'ble Supreme Court, this Court is of the considered view that the exercise of discretionary power by the disciplinary authority in inflicting a punishment of removal from service instead of a more harsh punishment of dismissal from service cannot be said to be arbitrary or improper and the punishment inflicted upon the petitioner cannot be said to be grossly in excess of proved misconduct.
30. For the reasons as aforesaid this Court holds that the orders passed by the disciplinary authority dated 29.09.2018 and the appellate authority dated 24.07.2019 do not call for any interference. Accordingly the writ petition stands dismissed. Consequently the application also stands disposed of. There shall be, however, no order as to costs.
31. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)

(P.A.-Sanchita)