

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

123

CWP-11092-2023 (O&M)

Date of Decision : 18.07.2023

Vijender

..... Petitioner

Versus

Punjab National Bank and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Braham Prakash, Advocate
for the petitioner.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of Constitution of India is seeking setting aside of enquiry order dated 27.07.2021 (Annexure P-6), order dated 23.12.2021 (Annexure P-11) and dated 08.03.2022 (Annexure P-12) whereby Disciplinary Authority has discharged him from the service and his appeal has been dismissed.

2. The brief facts of the case are that the petitioner joined Oriental Bank of Commerce on 21.11.2011 as Single Window Operator. In January 2020, it came in the knowledge of the management of the bank that a sum of Rs.20,93,758/- has been credited in the account of Sandeep son of Tilak Ram, without existence of original CDR. The bank initiated proceedings against the petitioner.

3. The petitioner deposited aforesaid amount with the bank along with interest. The petitioner was served charge-sheet dated 16.06.2021

(Annexure P-4) and thereafter vide communication dated 27.07.2021 informed that departmental enquiry would be conducted to find out the fact of the charges levelled against him. The petitioner during the enquiry proceedings vide letter dated 26.08.2021 stated that he has already deposited the entire amount along with interest and he apologises for his mistake. He has worked with full integrity and honesty with the bank. He may be forgiven and his suspension may be revoked. The Disciplinary Authority on the basis of report of Enquiry Officer issued a show cause notice dated 04.12.2021 (Annexure P-10) wherein punishment of discharge from service was proposed. The Disciplinary Authority vide order dated 23.12.2021 (Annexure P-11) confirmed the proposed penalty. The petitioner was ordered to be discharged from service with superannuation benefits i.e. pension, provident fund and gratuity. The petitioner preferred an appeal before the Appellate Authority which came to be dismissed vide order dated 08.03.2022. In the appeal, the petitioner did not dispute the allegations, however, prayed for lenient view.

4. Learned counsel for the petitioner *inter alia* contends that the petitioner was not granted sufficient opportunity to put forth his stand. The petitioner has been made scapegoat. The misappropriation was on the part of respondents No. 5 and 6. The offence was not actually committed by the petitioner whereas it was respondents No.5 and 6 who had actually committed the alleged offence. The petitioner has deposited amount on account of pressure of respondents No.5 and 6.

5. I have heard arguments of learned counsel for the petitioner and perused the record.

6. The petitioner during the course of enquiry has submitted in writing that he has deposited alleged amount, thus, lenient view may be taken. In the impugned appellate order, the grounds of appeal have been reiterated which are reproduced as below :

“6. He had tendered the captioned appeal vide letter dated 27.01.2022. Accordingly, the appeal is not time barred. He has raised following points in his appeal:

a. That the appellant had already admitted the fraud played by him upon the bank as well as upon the concerned customer of the bank, which guilt was done by him due to sudden provocation of greed, however after realizing the same the appellant not only fairly admitted his guilt, but also deposited back the concerned Amount of Rs.20,63,000/- with interest to the bank.

b. That despite admitting the guilt done by the appellant and despite the fact that the Appellant deposited back the concerned amount of Rs.20,63,000/- with Interest to the bank, Departmental Enquiry was ordered to be held against him without there being any reason & use, with a view to harass and humiliate the appellant in the hands of the Disciplinary Authority.

c. That during the proceedings of Departmental Enquiry before the Disciplinary Authority Appellant while admitting the guilt on his part prayed for Liberal approach while extending punishment and prayed not to discharge him from the services, but the disciplinary authority without considering the circumstances of the case has extended the highest punishment to the Appellant thereby discharging him from the services, which will not only affect the career of the Appellant rather, will also affect the source of livelihood of the entire family of the Appellant, which is dependent upon him. Though the appellant is ready to regret his guilt by

other means of punishment except that of discharge from services.”

7. From the perusal of above quoted grounds as well as letter dated 26.08.2021 filed by the petitioner, it is quite evident that the petitioner is not disputing whether he has committed alleged offence or not. He had accepted that he has committed alleged offence and repaid the embezzled amount, however, he was praying for lenient view. The petitioner has been discharged from service with superannuation benefits i.e. pension, provident fund and gratuity as would be otherwise due. It shows that the respondent-bank has taken a lenient view despite admission on the part of the petitioner. The claim of the petitioner that alleged offence was committed by respondents No.5 and 6 seems to be afterthought and he is trying to shift responsibilities upon others.

8. A two-judge Bench of Hon'ble Supreme Court in **Union of India and others vs. Subrata Nath, 2022 LiveLaw (SC) 998** while advertizing with scope of interference under Article 226 of the Constitution of India in disciplinary proceedings has held that departmental authorities are fact finding authorities. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. The Hon'ble Supreme Court has held that High Court cannot look into quantum of punishment unless and until sentence/punishment awarded shocks the conscience of the Court. The relevant extracts of the judgment read as :

“19. Laying down the broad parameters within which the High Court ought to exercise its powers under Article 226/227 of the Constitution of India and matters relating

to disciplinary proceedings, a two Judge Bench of this Court in Union of India and Others v. P. Gunasekaran held thus :

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law; (iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.”

X

X

X

X

22. To sum up the legal position, being fact finding authorities, both the Disciplinary Authority and the Appellate Authority are vested with the exclusive power to examine the evidence forming part of the inquiry report. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. However, in exercise of powers of judicial review, the High Court or for that matter, the Tribunal cannot ordinarily reappreciate the evidence to arrive at its own conclusion

in respect of the penalty imposed unless and until the punishment imposed is so disproportionate to the offence that it would shock the conscience of the High Court/Tribunal or is found to be flawed for other reasons, as enumerated in P. Gunasekaran (supra). If the punishment imposed on the delinquent employee is such that shocks the conscience of the High Court or the Tribunal, then the Disciplinary/Appellate Authority may be called upon to re-consider the penalty imposed. Only in exceptional circumstances, which need to be mentioned, should the High Court/Tribunal decide to impose appropriate punishment by itself, on offering cogent reasons therefor.”

9. This Court neither finds any glaring mistake in the impugned orders nor finds punishment disproportionate to alleged offence.
10. Accordingly, the petition sans merit and deserves to be dismissed.
11. Dismissed.

(JAGMOHAN BANSAL)
JUDGE

18.07.2023
anju

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No