

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 21st APRIL, 2023

IN THE MATTER OF:

+ **LPA 368/2023**

DEBASIS MOHAPATRA

..... Appellant

Through: Ms. Rajdipa Behura, Mr. Philomon Kani, Mr. Ashray Behura and Ms. Neha Dobriyal, Advocates

versus

CANARA BANK (ERTSWHILE SYNDICATE BANK) & ORS.

..... Respondents

Through: Mr. Rajat Arora and Mr. Niraj Kumar, Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT(ORAL)

C.M. No. 19837/2023 (Exemption)

Allowed, subject to all just exceptions.

LPA 368/2023

1. Aggrieved by the dismissal of the writ petition being W.P.(C) No.1271/2014, the Appellant herein has filed the instant LPA with the following prayers:-

"1. Set aside the impugned Judgement dated 20.03.2023, passed by the Hon'ble Single Judge in case titled Debasis Mohapatra v. Canara Bank & Ors. (Erstwhile Syndicate Bank) bearing W.P.(C) No.1271 of 2014.

ii. Issue order or direction quashing of the order dtd. 26.11.2013 passed by the Reviewing Authority, The order dtd. 08.02.2013 passed by the Appellate Authority and, the penalty order dtd. 27.07.2011 passed by the Disciplinary Authority.

iii. Exonerate the Appellant and direct the Respondents to release his entire set of back wages along-with all the financial and service benefits that the Appellant was/would have been entitled to had he continued in service."

2. The facts of the case reveal that between 13.02.2009 and 27.11.2009, the Appellant was posted as Assistant General Manager with the Syndicate Bank, East Patel Nagar, Delhi. By a notification dated 04.03.2020, the Syndicate Bank has been amalgamated into Canara Bank. The allegation against the Appellant is that he sanctioned/released credit facility in the form of Advance Against Bills for Collection (AABC) amounting to Rs.1,30,00,000/- to one M/s Malick Gold House Pvt. Ltd., which was allegedly granted in violation of the Bank's guidelines and which had exposed the Bank to a loss to the tune of Rs.1,47,30,000/-.

3. An Inquiry Officer was appointed and the inquiry was conducted in the matter. The Inquiry Officer found the Appellant to be guilty of the charges levelled against him and submitted the Inquiry Report to the Disciplinary Authority. A copy of the Inquiry Report was furnished to the Appellant herein and the Appellant had also submitted a representation dated 09.05.2021 to the Inquiry Authority.

4. The Disciplinary Authority *vide* Order dated 27.07.2011 dismissed the Appellant from service with immediate effect. Against the order of dismissal

passed by the Disciplinary Authority, the Appellant preferred an appeal before the Appellate Authority. The Appellate Authority *vide* Order dated 08.02.2013 set aside the order of dismissal from service passed by the Disciplinary Authority. However, the Appellate Authority imposed penalty of compulsory retirement on the Appellant.

5. The Appellant filed an application before the Reviewing Authority for review of the Order dated 08.02.2013 passed by the Appellate Authority. The Reviewing Authority *vide* Order dated 26.11.2013 confirmed the order passed by of the Appellate Authority.

6. The Appellant filed a Writ Petition, being W.P.(C) No. 1271/2014, challenging the order dated 26.11.2013 passed by the Reviewing Authority, order dated 08.02.2013 passed by the Appellate Authority and order dated 27.07.2011 passed by the Disciplinary Authority, seeking for exoneration and for a direction of reinstatement in service along with all consequential benefits.

7. The learned Single Judge after going through the material on record observed that the order passed by the Appellate Authority imposing punishment of compulsory retirement on the Appellant is commensurate with the charges established against the Appellant and does not require any interference. It is this order which is under challenge before this Court in the present LPA.

8. Learned Counsel for the Appellant submits charges against the Appellant and one Gurudev Singh are identical. It is stated that Gurudev Singh, who was posted as Senior Manager and is a specifically trained officer for foreign exchange business, and was also involved in the same transaction, and who according to the Appellant, was the official to guide

and advise the Appellant herein for sanctioning such transactions. It is contended that Mr. Gurudev Singh also faced inquiry on similar charges and he has been given a minor punishment of reduction of one stage in his basic pay for one year without cumulative effect and without affecting his pension, whereas, the Appellant, who according to the him, is working under the guidance of Mr. Gurudev Singh has been given a major penalty of dismissal from service, at the first instance, and which was reduced to compulsory retirement by the Appellate Authority.

9. The same argument had been advanced before the learned Single Judge. The learned Single Judge after considering the material on record came to the conclusion that the Appellant was posted as an Assistant General Manager (Scale-V) and Gurudev Singh was posted as Senior Manager (Scale-III). The said contention was rejected. No material has been brought on record to upset the finding of the learned Single Judge and the contention of the Appellant that he is in a subordinate position to Mr. Gurudev Singh cannot be accepted.

10. The learned Single Judge from the material on record found that there were only three charges against Mr. Gurudev Singh in contrast to nine charges against the Appellant herein. The learned Single Judge also found that the Appellant was the sanctioning authority whereas Mr. Gurudev Singh was the junior officer. In fact, Gurudev Singh had pointed out the adverse features of the loan transactions which had been ignored by the Appellant while sanctioning the loan to M/s Malick Gold House Pvt. Ltd.

11. Learned Counsel for the Appellant has not been able to point out as to how the findings of the learned Single Judge are contrary to the material placed on record.

12. The learned Single Judge after elaborately considering the material placed on record held that the powers of the High Court while exercising its jurisdiction under Article 226 of the Constitution of India while dealing with the facts and the punishment imposed by the Disciplinary Authority and other Authorities in an inquiry proceedings came to the conclusion that the charges have been correctly proved and that there was nothing perverse in the orders of the authorities and it cannot be said that the authorities have come to a finding of guilt without any material against the Appellant herein. The learned Single Judge has also held that the punishment could not be said to be disproportionate to the charge/misconduct which had been proved against the Appellant. No material has been supplied to the Court to upset the findings of the learned Single Judge. The order dated 20.03.2023 passed by the Learned Single Judge in Paragraph Nos. 21 to 32 reads as under:

“21. I have heard learned counsels for the parties and have perused the record.

22. The facts on record show that the petitioner was issued with a charge sheet dated 26.06.2010, wherein it was alleged against him that while functioning as Assistant General Manager at the East Patel Nagar Branch, New Delhi, for the period from 13.02.2009 to 27.11.2009, he had abused his official position and sanctioned/released credit facilities in the form of Advance Against Bills for Collection (AABC) amounting to Rs. 130,00,000/- to M/s Gold Malik Gold House Private limited in blatant violation of the bank guidelines. Thus, the petitioner unduly accommodated the parties concerned thereby exposing the bank funds to the tune of Rs.147.30 lakhs to the risk of loss. The petitioner was also charged of committing other irregularities.

23. Pursuant to detailed inquiry, vide order dated 27.07.2011 passed by the Disciplinary Authority, the petitioner was imposed with punishment of dismissal from

service, which order was modified by the Appellate Authority to that of compulsory retirement and the same was maintained by the Reviewing Authority.

24. The main ground urged by the petitioner is with regard to discrimination against him in as much as a major penalty has been imposed upon him, while Sh. Gurudev Singh has been let off with minor penalty.

25. The petitioner, who was posted as Assistant General Manager and Sh. Gurudev Singh, who was posted as Senior Manager (Scale-III) were working at the relevant time at East Patel Nagar branch of the bank. Perusal of the charge sheet dated 30.12.2010 as issued to Sh. Gurudev Singh, makes it evident that the charges against the petitioner and Sh. Gurudev Singh were distinct and different. There were 3 charges against Sh. Gurudev Singh, in contrast to the 9 charges against the petitioner.

26. Documents on record clearly point out that the gravity of the lapses against Sh. Gurudev Singh were much less as compared to the one as levelled against the petitioner. The petitioner was the Sanctioning Authority in respect of the loan transactions, where as Sh. Gurudev Singh was the Junior Officer. As pointed out from the record, though the adverse features in the loan transaction were pointed out by Sh. Gurudev Singh to the petitioner, however, ignoring those objections, the petitioner had permitted further release of the advance against bills credit to the party concerned. Sanction was granted by the petitioner by directing the Junior Officer Sh. Gurudev Singh to release advance against bills for disbursement to the party concerned. The petitioner was the Sanctioning Authority, while Sh. Gurudev Singh complied with the written instructions of the petitioner.

27. The charges against the petitioner were proved during the course of inquiry proceedings. Considering the findings of the Enquiry Officer, the Disciplinary Authority imposed penalty upon the petitioner, which was modified by the Appellate Authority from that of dismissal to compulsory

retirement. The findings as recorded by Enquiry Officer are lawful and based upon the evidence before him. The petitioner cannot abdicate his responsibility by blaming the Junior Officer. The petitioner being a Senior Executive had to share the higher degree of responsibility than his Junior Officer. As established, Sh. Gurudev Singh was only following the instructions as given to him by his senior officer i.e. the petitioner.

28. Sh. Gurudev Singh was proceeded against departmentally for minor penalty in view of the lapses imputed against him. Since the charges levelled against the petitioner were grave and serious in nature, he was proceeded against departmentally for major penalty proceedings. Thus, it cannot be said that there has been prejudice caused to the petitioner on this count. It is matter of record that Sh. Gurudev Singh was also imposed punishment on the basis of the charges levelled and proved against him.

29. The orders passed by the Appellate Authority and the Reviewing Authority of the respondent bank are just and have been passed after due application of mind. It is well established that Disciplinary Authority is the best judge to impose the penalty upon the delinquent officer. The inquiry report submitted by the Inquiry Officer is based upon the documentary as well as oral deposition before him.

30. This Court while exercising its powers under Article 226 of the Constitution would not sit in appeal over the findings of the Departmental Authority and substitute its own view. The findings of the Inquiry Officer as well as orders of the Appellate Authority are reasonable and just and are based upon cogent evidence. This Court would not re-appreciate the evidence which has come before the Departmental Authority.

31. The punishment of compulsory retirement imposed upon the petitioner is just and is commensurate with the gravity of the charges levelled and proved against the petitioner. Once

the Court does not find any irregularity in conducting the departmental inquiry and no procedural lapses have been found, then there is no justification for this Court to interfere with the order of punishment imposed by the Disciplinary Authority.

32. The law is well established that ascertaining whether a misconduct has been committed, is within the realm of the Disciplinary Authority. The standard of proof for establishing a misconduct during disciplinary proceedings is preponderance of probabilities and not proof beyond reasonable doubt, as in criminal trial. Thus, when an inquiry is found to have been held as per the prescribed procedure and there is no violation of principles of natural justice in conduct of the proceedings, then, the punishment as imposed by the Disciplinary Authority does not warrant interference. ”

13. This Court has carefully gone through the order passed by the Learned Single Judge, and the record of the case reveals that no procedural irregularity has been committed in the departmental enquiry nor principle of natural justice has been violated.

14. The jurisdiction of Courts while interfering in matters of interference in departmental proceedings and disciplinary action is settled. The Hon’ble Supreme Court in the case of ***R. Mahalingam v. T.N. Public Service Commission***, (2013) 14 SCC 379, has provided guidance on the scope of judicial interference in matters challenging disciplinary action. The Hon’ble Supreme Court in the aforesaid case, in paragraph 11 has held as under: -

“11. We have heard the learned counsel for the parties. The scope of judicial review in matters involving challenge to the disciplinary action taken by the employer is very limited. The courts are primarily concerned with the question whether the enquiry has been held by the competent authority in accordance with the prescribed procedure and whether the rules of natural justice have been followed. The court can also consider

whether there was some tangible evidence for proving the charge against the delinquent and such evidence reasonably supports the conclusions recorded by the competent authority. If the court comes to the conclusion that the enquiry was held in consonance with the prescribed procedure and the rules of natural justice and the conclusion recorded by the disciplinary authority is supported by some tangible evidence, then there is no scope for interference with the discretion exercised by the disciplinary authority to impose the particular punishment except when the same is found to be wholly disproportionate to the misconduct found proved or shocks the conscience of the court.”

15. The Hon’ble Supreme Court in the case of ***Apparel Export Promotion Council Vs. A.K. Chopra***, (1999) 1 SCC 759, in paragraphs 16 & 17 has held as under:

“16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or

such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Hailsham in Chief Constable of the North Wales Police v. Evans [(1982) 3 All ER 141 HL] observed:

“The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized or enjoined by law to decide for itself, a conclusion which is correct in the eyes of the court.”

17. Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority.”

16. The Hon’ble Supreme Court has held that in exercise of review jurisdiction, normally, there should be no interference with the factual

findings in a departmental enquiry unless the Court finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/ or legally untenable.

17. The Hon'ble Supreme Court in the case of ***State of A.P. Vs. S. Sree Rama Rao***, (1964) 3 SCR 25, in paragraph 7 has held as under:

“7. There is no warrant for the view expressed by the High Court that in considering whether a public officer is guilty of the misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court, must be applied, and if that rule be not applied, the High Court in a petition I ... under Article 226 of the Constitution is competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. 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 in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that

no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.”

18. In the aforesaid case, the scope of judicial scrutiny has been looked into by the Hon’ble Supreme Court in exercise of writ jurisdiction under Article 226 of the Constitution of India.

19. The Hon’ble Supreme Court in the case of ***Union of India Vs. P. Gunasekaran***, (2015) 2 SCC 610, in paragraphs 12 & 13 has held as under:

“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.”

20. The Hon'ble Supreme Court in the case of ***State of Karnataka Vs. N. Gangaraj***, (2020) 3 SCC 423, has taken into account the earlier judgments delivered on the subject and has reiterated that the scope of interference in departmental enquiry is quite limited. Interference in disciplinary

proceedings can be done in case there is violation of principles of natural justice and fairplay or if the findings arrived at are based on no evidence/ perverse findings.

21. In light of the aforesaid judgments and in absence of any procedural irregularity or violation of principles of natural justice and fair play, this Court does not find any reason to interfere with the order passed by the Disciplinary Authority, the Appellate Authority as well as the order passed by the Learned Single Judge.

22. This Court having heard learned Counsel for the Appellant and having perused the material on record is of the opinion that no interference is required in the present case. The appeal is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

APRIL 21, 2023

hsk/aks