IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

201

Date of decision: 15.07.2025

CWP-19411-2012

ASHWANI KUMAR GUPTA ......Petitioner

VERSUS

BANK OF INDIA AND OTHERS ....Respondents

CWP-28188-2013

ASHWANI KUMAR GUPTA ......Petitioner

VERSUS

BANK OF INDIA AND OTHERS ....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present: - Mr. Gaurav Sharma, Advocate
for the petitioners.

Mr. R.N. Lohan, Advocate
for the respondents.

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present writ petition is to the impugned order dated 26.04.2010 whereby major penalty of dismissal from service has been imposed upon the petitioner as well as to the order dated 05.03.2012 whereby his appeal had been rejected. While CWP-19411 of 2012 challenges the final order imposing penalty, CWP-28188 of 2013 had been filed for seeking setting aside of the letter dated 18.11.2013 claiming release of terminal benefits including PF that had been declined vide the impugned communication. The

same are thus being heard and decided together with the consent of the parties. Factual reference to the dispute is drawn from CWP-19411-2012.

2. Learned Counsel appearing on behalf of the petitioner contends that the petitioner had joined as a 'Clerk' with the respondent-Bank of India on 01.09.1972 and he was later promoted as Officer Scale-I on 01.07.1980; Officer Scale-II on 01.01.1988 and Officer Scale-III on 16.03.2001. During 37 years of service, the petitioner performed his duties most efficiently earning appreciation letters/certificate in recognition of his services offered to the respondent-Bank. The petitioner was, however, placed under suspension on 13.10.2009 and later a chargesheet dated 12.01.2010 was served upon him 04 months prior to his superannuation on 30.04.2010.

3. Broadly the charge leveled against the petitioner was that during the period between 05.01.2008 to 13.10.2009, while being posted as a Senior Branch Manager at Bank of India, Sector-20, Panchkula, the petitioner sanctioned an extended Export Packing Credit limit of Rs. 24 lakhs and entertained negotiation of bills in the account of M/s Risefast Marketing Pvt. Ltd. and thereby acted to the detriment of the Bank's interest.

4. A regular Departmental Inquiry was conducted into the said allegations and a report was submitted by the Inquiry Officer, without affording a due opportunity and defence to the petitioner. As per the sequence of events, the petitioner was served with the charge sheet on 12.01.2010 which was delivered to him on 18.01.2010 and reply thereto was filed on 23.01.2010. The Inquiry Officer was also appointed on the same date and the inquiry was concluded on 19.02.2010 i.e. within a period of 03 weeks. The inquiry report

was submitted on 15.03.2010 followed by a show cause notice dated 18.03.2010 to which reply was submitted on 25.03.2010. The said proceedings culminated in an order of dismissal from service on 26.04.2010 i.e. within a period of less than 04 months and 04 days prior to his superannuation.

5. Learned Counsel for the petitioner contends that the Bank has suffered no tangible loss and that the highest penalty of dismissal from service has been imposed only on an alleged procedural violation and on the charge that the petitioner acted beyond the authorization and thus jeopardized the interest of the Bank. He submits that the Bank never suffered any loss and that the initiation of the charge sheet at the fag end of his career was only to deprive the petitioner of his benefits of lifelong service with the respondent-Bank.

6. He submits that there was no allegation of any embezzlement or unlawful benefit derived by the petitioner at his level. The petitioner had sanctioned the Export Packing Credit limit to M/s Risefast Marketing Pvt. Ltd. according to the request and need basis as per the norms. In Packing Credit Limit, turn over method is not applicable. At the time when case was processed, the company had received a confirmed order of Rs. 36 lakhs against a letter of credit issued by the Bangla Desh Krishi Bank for a sum of 1,26,000 dollars. The same was sent to the Sector-20, Panchkula Branch where the petitioner was working. Since the petitioner was not authorized to deal with foreign exchange, the demand was forwarded to the Chandigarh Branch of the Bank of India. It was the duty of the negotiating Branch in Chandigarh to verify all the formalities and that the Branch where the petitioner was posted at, acted merely as a Post Office. The authorized Branch being Chandigarh Branch for conducting formal business, it was within their authority to refuse the

negotiation of documents at any stage on the ground of any discrepancy. However, no discrepancy of any nature whatsoever was pointed out by the Chandigarh Branch or even by the Zonal Office, which carried out scrutiny of the proposal sanctioned at the Branch level. He further submits that a Circular dated 27.09.2004 had been issued by the Head Office for Post Sanction Review System (PSRS) for accounts with exposure of Rs. 2 lacs and above. The copies of the sanction proposal were sent under the PSRS system during the month to the Credit Monitoring Department Zonal Office but no adverse observations were recorded even therein as well which establishes that the proposal sent by the Branch was in order. He further contends that as per the information obtained by him vide letter dated 06.03.2013 under the Right to Information Act, 2005, it is evident that all the proposals sanctioned at the branch level were to be scrutinized at the zonal level to check as to whether the sanction had been accorded as per the Bank norms. It is also established that the primary functions and responsibility to undertake all types of Forex business was with the Branch at Chandigarh. It is only with an intent to safeguard the officials working at the Chandigarh Branch that the liability has been directed against the petitioner. He further submits that at no point in time, the letter of Credit amounting to 1,26,000 dollars issued by the Bangla Desh Bank is not in dispute and that the said letter of credit had been forwarded through the ICICI Bank, Kolkata. Further necessary compliance or discrepancy had to be identified and ensured by the Chandigarh Branch. He further contends that the penalty of dismissal imposed upon the petitioner is disproportionately harsh and completely ignores that he had rendered unblemished service with the respondent-Branch for more than 37 years.

7. Counsel for the respondent-Bank on the other hand contends that the procedure as required to be followed in departmental proceedings has been adhered to and the charges stand proved against the petitioner. He contends that on a proven charge of mis-conduct, the punishment imposed should not ordinarily be interfered with in view of the judgment of the Hon'ble Supreme Court in the matter of ***"Life Corp. of India & Others versus S.Vasanthi"*** reported as ***2014 (9) SCC 315.*** The relevant extract thereof reads thus:-

> "***10.*** *The scope and power of judicial review of the courts while dealing with the validity of quantum of punishment imposed by the disciplinary authority is now well-settled. In Kendriya Vidyalaya Sangthan v. J. Hussain [(2013) 10 SCC 106 : (2013) 2 SCC (L&S) 833] , the law on this subject, is recapitulated in the following manner: (SCC pp. 110-12, paras 7-10)*
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> > *"7. When the charge is proved, as happened in the instant case, it is the disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be imposed. Of course, this discretion has to be examined objectively keeping in mind the nature and gravity of the charge. The disciplinary authority is to decide a particular penalty specified in the relevant Rules. A host of factors go into the decision making while exercising such a discretion which include, apart from the nature and gravity of misconduct, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the delinquent, previous penalty, if any, and the discipline required to be maintained in department or establishment where he works, as well as extenuating circumstances, if any exist.*

8. The order of the appellate authority while having a relook at the case would, obviously, examine as to whether the punishment imposed by the disciplinary authority is reasonable or not. If the appellate authority is of the opinion that the case warrants lesser penalty, it can reduce the penalty so imposed by the disciplinary authority. Such a power which vests with the appellate authority departmentally is ordinarily not available to the court or a tribunal. The court while undertaking judicial review of the matter is not supposed to substitute its own opinion on reappraisal of facts. (See UT of Dadra & Nagar Haveli v. Gulabhia M. Lad [(2010) 5 SCC 775 : (2010) 2 SCC (L&S) 101] .) In exercise of power of judicial review, however, the court can interfere with the punishment imposed when it is found to be totally irrational or is outrageous in defiance of logic. This limited scope of judicial review is permissible and interference is available only when the punishment is shockingly disproportionate, suggesting lack of good faith. Otherwise, merely because in the opinion of the court lesser punishment would have been more appropriate, cannot be a ground to interfere with the discretion of the departmental authorities.

9. When the punishment is found to be outrageously disproportionate to the nature of charge, principle of proportionality comes into play. It is, however, to be borne in mind that this principle would be attracted, which is in tune with doctrine of Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947)

2 All ER 680 (CA)] rule of reasonableness, only when in the facts and circumstances of the case, penalty imposed is so disproportionate to the nature of charge that it shocks the conscience of the court and the court is forced to believe that it is totally unreasonable and arbitrary. This principle of proportionality was propounded by Lord Diplock in Council of Civil Service Unions v. Minister for Civil Service [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] in the following words: (AC p. 410 D-E)

'… Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads of the grounds upon which administrative action is subject to control by judicial review. The first ground I would call "illegality", the second "irrationality" and the third "procedural impropriety". This is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of "proportionality".'

10. An imprimatur to the aforesaid principle was accorded by this Court as well in Ranjit Thakur v. Union of India [(1987) 4 SCC 611 : 1988 SCC (L&S) 1 : (1987) 5 ATC 113] . Speaking for the Court, Venkatachaliah, J. (as he then was) emphasising that 'all powers have legal limits' invokes the aforesaid doctrine in the following words: (SCC p. 620, para 25)

'25. … The question of the choice and quantum of punishment is within the jurisdiction and discretion of

the court martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review.'"

11. *We are of the opinion that the High Court transgressed its limits of judicial review by itself assuming the role of sitting as a departmental appellate authority, which is not permissible in law. The principles discussed above have been summed up and summarised as follows in Lucknow Kshetriya Gramin Bank* v. *Rajendra Singh [(2013) 12 SCC 372] : (SCC p. 382, para 19)*

"19.1. When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.

19.2. The courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.

19.3. Limited judicial review is available to interfere with the punishment imposed by the disciplinary *authority, only in cases where such penalty is found to be shocking to the conscience of the court.*

19.4. Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.

19.5. The only exception to the principle stated in para 19.4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable."

8. He further contends that a lenient view need not be taken against the proven misconduct of an employee and that a Bank employee who is guilty of financial irregularity regarding public money should not be extended any leniency.

9. Referring to the above, he submits that no lesser punishment but for punishment for dismissal from service should have been imposed upon the petitioner and that the same has rightly been extended.

10. On a pointed query, however, he does not dispute that there is no allegation of any financial embezzlement or proven charge of having availed any pecuniary benefits, leveled against the petitioner nor any such charges have been proved.

11. He is also not in a position to refer to any document which would establish any actual loss that has ocassioned to the Bank. It was thus only a contemplated probable loss that may have occurred on the basis whereof the punishment of dismissal from service has been imposed.

12. No other argument has been redressed.

13. I have heard learned Counsel appearing on behalf of the respective parties and have gone through documents appended alongwith the present writ petition.

14. While being conscious of the law that the jurisdiction of High Court in exercise of powers of judicial review is restricted and that it would not ordinarily interfere with the conclusions drawn by the competent authority, however, position in law is also well settled to the extent that in case the punishment is extremely disproportionate to the charge leveled, the High Court may interfere in exercise of its jurisdiction and balance the equities. Reliance may be placed on the judgment of Hon'ble Supreme Court in the matter of "***Ranjit Thakur versus Union of India and others***" reported as ***(1987) 4 SCC 611***. The relevant extract thereof reads thus:-

*"**25.** Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. In Council of Civil Service Unions v. Minister for the Civil Service [(1984) 3 WLR 1174 (HL) : (1984) 3 All ER 935, 950] Lord Diplock said:*

> *"Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of*

the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community;. . ."

26. *In Bhagat Ram v. State of Himachal Pradesh [(1983) 2 SCC 442 : 1983 SCC (L&S) 342 : AIR 1983 SC 454] this Court held: [SCC p. 453, SCC (L&S) p. 353, para 15]*

"It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution."

The point to note, and emphasise is that all powers have legal limits.

27. *In the present case the punishment is so strikingly disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review.*

28. *In the result, for the foregoing reasons, the appeal is allowed, the order of the High Court is set aside, the writ petition preferred in the High Court allowed and the impugned proceedings of the summary court-martial dated March 30, 1985, and the consequent order and sentence are quashed. The appellant is entitled to and shall be reinstated with all monetary and service benefits. There will, however, be no order as to costs.*

15. This Court feels that in the present case, an equitable jurisdiction needs to be extended as the punishment of dismissal from service is evidently

disproportionate to the charge established against the petitioner, for the following reasons:-

(i) That the claim of the petitioner about having rendered unblemished service for a period of more than 37 years prior to the initiation of the disciplinary proceedings remains undisputed;

(ii) That the allegations leveled against the petitioner are primarily in the nature of procedural impropriety and having acted beyond jurisdiction in sanctioning credit facility. The respondents have not established or referred to any document as would show that the Bank has suffered any pecuniary loss as a result of the extension of the credit limit by the petitioner.

(iii) There is no allegation of any embezzlement of any funds or any financial or pecuniary benefits having been availed by the petitioner in the said transaction.

(iv) The information obtained under the RTI and attached with the petition also shows that it was the responsibility of the Chandigarh Branch to scrutinize the document and verify the documents appended alongwith the proposal. Hence, it could at best be a contributory default. The entire liability of certain deficiency in the document cannot be completely fastened against the petitioner by Bank who has mooted the proposal more so when such lapse could not be pointed out even by the sanctioning branches. The Chandigarh Branch and Zonal Office cannot ignore their responsibility of having sanctioned the limit and having failed to point out any discrepancy in the proposal that has been mooted.

16. No such document has also been placed on record by the respondent-Bank that any proceedings had also been initiated against the officials posted at Chandigarh Branch who were accountable/responsible for scrutiny of documents and verification of the proposal before the requisite sanction was to be granted.

17. Even though, ordinarily a case is required to be remanded for punishment to the authorities, however, considering that the writ petition pertains to the year 2012 and the order of punishment was passed in the year 2010 and a period of nearly 15 years has elapsed, it would thus be appropriate that the issue be finalized instead of taking the matter at the stage where it started. The punishment of removal from service is thus ordered to be modified to one of compulsory retirement w.e.f. the date when the order of dismissal was passed.

18. For the foregoing reasons, the present petition i.e. CWP-19411-2012 is partly allowed.

19. The respondents are directed to compute the pensionary benefits admissible to the petitioner, after treating the order of dismissal as that of compulsory retirement, and to disburse the admissible financial benefits within a period of 04 months of receipt of certified copy thereof.

20. Since the writ petitions preferred by the petitioner have been partly allowed and the admissible financial benefits have been ordered to be released in favour of the petitioner in a time bound manner as in CWP-19411-

2012 vide judgment of even date, hence, no separate order is required to be passed in CWP-28188-2013. The same is also ordered to be disposed of in above terms.

Ordered accordingly.

(VINOD S. BHARDWAJ)
JUDGE

JULY 15, 2025
Vishal Sharma

Whether speaking/reasoned	**:**	Yes/No
Whether Reportable	:	Yes/No