

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

Hon'ble Justice Partha Sarathi Sen

W.P.A No. 29678 of 2016

Sri Jyotirmoy Sardar

-Versus-

Central Bank of India & Ors.

For the Petitioner : **Mr. Malay Dhar, Adv.,**
Mr. Biswajit Sarkar, Adv,
Mr. Amit Bikram Mahata, Adv.

For the Respondent/

Central Bank of India : **Mr. Bishwambhar Jha, Adv.**

Last Heard on: : **15.09.2023**

Judgment on. : **20.09.2023**

PARTHA SARATHI SEN, J. : -

1. In this writ petition as filed under Article 226 of the Constitution of India the writ petitioner has impugned the decision of the Appellate Authority of the respondent no.1-bank which has been communicated to him vide memo no. RO/S/KOL/HRD/DAD/2014-15/07/1027 dated 30.07.2014. By the impugned memo the respondent no. 4 being the Appellate Authority imposed the following penalty:

“ Reduction of Basic Pay by two stages in the time scale of pay for the period up to his superannuation i.e. 31.05.2015, with further direction that the officer will not earn increments of pay during the period of such reduction in terms of Regulation 4(f) of Central Bank of India Officer Employees’ (Discipline and Appeal) Regulations, 1976.”

2. From the materials as placed before this Court it reveals that the writ petitioner was posted as Branch Manager at Kalighat Branch of respondent no.1-Bank during the period 08.07.2004 to 12.05.2007 and during such tenure in discharge of his capacity as Branch Manager it has been alleged by the respondent no. 1-Bank that he had committed irregularities while sanctioning house building loans to customers of the said bank for which he was served with a memo dated 31.10.2011 wherein the writ petitioner was asked to submit his explanation within seven days.

3. The writ petitioner submitted his explanation to which the respondent-bank authority was not satisfied and that is why under cover of memorandum dated 06.12.2013 charge sheet was submitted against the writ petitioner under two heads. In course of enquiry, evidence was recorded both, oral and documentary and on appreciation of such evidence the enquiry officer found both the charges have been proved partially.

4. When the matter was referred to the Disciplinary Authority, Disciplinary Authority concurred with the finding of the Enquiry Authority both in respect of the charge no.1 and charge no.2 and thus awarded penalty which has been confirmed by the Appellate Authority.

5. Mr. Dhar, learned advocate for the writ petitioner in course of his submission draws attention of this Court to the memo dated 31.10.2011 as served upon the writ petitioner vis-a-vis the charge sheet. It is contended by Mr. Dhar, learned advocate for the writ petitioner that on comparative study the said memo and the aforesaid charge sheet it would reveal that the said memo dated 31.10.2011 though speaks about alleged irregularity in

sanctioning the house building loans in favour of the customers of the bank vis; Biswajit Ghosh, Sabita Chatterjee, Pradip Debnath and Gopa Mukherjee, but the said memo is totally silent about any alleged irregularity in sanctioning cash credit limit to 'M/s Gobinda Store (proprietor Dilip Banik)'. It is thus argued that principle of natural justice has been violated at the instance of the respondents for not giving any opportunity to the writ petitioner to give his explanation with regard to the allegation in respect of sanctioning of cash credit limit to 'M/S Gobindo Stores' in their memo dated 31.10.2011. It is thus argued on behalf of the writ petitioner that since charge no.2 with regard to sanction of cash credit limit in favour of M/S Gobinda Stores has been incorporated in the charge sheet without giving any opportunity to controvert the same while issuing memo dated 31.10.2011, the respondent authorities have acted illegally in incorporating Charge no.2 in its charge sheet dated 06.12.2013 and thereafter proceeded with charge no. 2 by way of departmental enquiry.

6. Drawing attention to page no.45 of the writ petition , Mr. Dhar, learned advocate for the writ petitioner submits before this Court that prior to conclusion of the enquiry proceeding the writ petitioner under cover of his letter dated 28.02.2014 submitted a written brief on the concluded proceeding which is in the nature of a written argument and while submitting the enquiry report, the Enquiry Authority did not at all consider such written brief and that according to Mr. Dhar the enquiry report has been submitted without considering the evidence on record and thus the same is vitiated by considerations extraneous to the evidence and merits of the case and the

same has also been overlooked both by the Disciplinary Authority and the Appellate Authority.

7. It is further argued by Mr. Dhar that from the materials placed before this Court it would be apparent on the face of record that both the Disciplinary Authority and the Appellate Authority mechanically accepted the report of the Enquiry Report without applying their independent minds, as otherwise, they would have positively come to a finding that the charges as framed against the present writ petitioner were baseless. In course of his submission Mr. Dhar, learned advocate for the writ petitioner places his reliance upon the ***Bennet Coleman and Co. Pvt. Ltd vs. Punya Priya Das Gupta*** reported in ***AIR 1970 SC 426***.

8. It is thus argued by Mr. Dhar that since the findings of the Enquiry Authority, Disciplinary Authority and Appellate Authority are not based on evidence and on the contrary since those are based on consideration of irrelevant material and /or ignoring relevant material such findings may be held to be perverse and appropriate relief(s) may be granted in favour of the present writ petitioner.

9. Per contra, Mr. Jha learned advocate for the respondent –bank submits before this Court that the present writ petitioner was superannuated from his service on 31.05.2015 and he had received his entire retirement benefits without any objection. Such being the position the present writ petition may be held to be not maintainable in view of a Co-ordinate Bench decision as passed on 24.01.2018 in ***WP no. 30108 (W) of 2017 (Sri Pratap Ray vs. Kolkata Metropolitan Development Authority & Ors.)*** .

10. Drawing attention to the impugned decision of the Appellate Authority dated 30.07.2014 it is further submitted that an inordinate delay has been caused in filing the instant writ petition which shows that the writ petitioner has practically accepted the decision of the Appellate Authority and thereafter changed his mind and thus filed this writ petition.

11. Mr. Jha, learned advocate for the respondent-bank further argued that for incorporations of charge no.2 in the charge sheet no miscarriage of justice occurred and thus no prejudice has been caused to the writ petitioner since he had participated in the enquiry proceeding without raising any objection with regard to inclusion of charge no.2 and no such objection was raised either before the Disciplinary Authority or before the Appellate Authority as well. It is further argued by Mr. Jha that since the findings of the Enquiry Authority and /or Disciplinary Authority and /or Appellate Authority are based on proper appreciation of evidence, there is hardly any scope to interfere with the decisions of the Appellate Authority which is impugned in this writ petition.

12. Mr. Jha, thus submits that it is a fit case for dismissal of the instant writ petition.

13. Since the point of maintainability of the instant writ petition has been agitated on behalf of the bank this Court proposes to deal with the point of maintainability of the instant writ petition at the very outset.

14. This Court has meticulously gone through the decision of the Co-ordinate Bench dated 24.01.2018 in the case of **Pratap Ray (supra)**. In considered view of this Court the decision of **Pratap Ray (supra)** is quite distinguishable

from the facts and circumstances as involved in this case in view of the fact that in the case of ***Pratap Roy (supra)*** the writ petitioner instead of preferring an appeal against the orders of the Disciplinary Authority straightway approached this Court by filing writ petition and in the mean time he had retired from service and he had accepted all his retiral dues without any objection or protest. The case is however quite different here. The present writ petitioner being aggrieved with the decision of the Enquiry Authority had exhausted all the higher forums and on being dissatisfied with their orders approached this Court by filing this writ petition.

15. Admittedly the writ petitioner had retired in the mean time i.e on 31.05. 2015 and he had already received his all retiral benefits but in considered view of this Court the acceptance of the retirement benefits of the writ petitioner does not preclude him from approaching this Court by filing writ petition on the ground that he had accepted the order of the Appellate Authority. On the contrary it appears to his Court that from the materials as placed before this Court it is apparent on the face of the record that the present writ petitioner had never accepted the punishment as imposed upon him and thus approached all the higher forums including this Court. Such being the position this Court holds that the present writ petition is very much maintainable.

16. This Court now proposes to dispose of the writ petition on its merit. From the materials as placed before this Court it appears that the present writ petitioner was served with a memo dated 31.10.2011 by the respondent-bank whereby and whereunder explanation of the writ petitioner was sought for on

the ground of alleged irregularities committed by the writ petitioner while disbursing house building loans in favour of four persons namely; Biswajit Ghosh, Sabita Chatterjee, Pradip Debnath and Gopa Mukherjee.

17. In the said memo there is however no whisper about any alleged irregularity with regard to sanction of cash credit facility in favour of 'M/S Gobinda Stores'. This Court considers that since in the memo dated 31.10.2011 there is no whisper about the alleged irregularity with regard to the sanction of cash credit facility of 'M/.S Gobindo Stores' the charge no.2 under the cover of memorandum dated 06.12.2013 regarding 'C/C A/C – *Gobinda Stores (Prop. Dilip Banik)*' is not permissible since the same is violative of principles of natural justice and therefore charge no.2 in respect of memorandum dated 06.12.2013 as issued by respondent no.2 –bank is hereby quashed.

18. So far as the charge no.1 as framed against the present writ petitioner is concerned i.e. in respect of irregularities in granting house building loans in favour of the aforementioned four customers of the bank this Court finds that there is hardly any scope for this Court sitting in writ jurisdiction to interfere with the concurrent factual and reasoned findings of the Enquiry Authority, Disciplinary Authority and Appellate Authority.

19. The scope of judicial interference and /or judicial review has been dealt with in the reported decision of the High Court of Judicature at Bombay through its ***Registrar vs. Sasikant V. Patil and Another*** reported in **(2000) 1 SCC 416** where the Hon'ble Apex Court expressed the following view:-

“16. The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.

17. In State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723 : (1964) 3 SCR 25] this Court has stated so and further observed thus:

“The High Court is not constituted in a proceeding under Article 226 of the Constitution as 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. Whether 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.”

18. The above position has been reiterated by this Court in subsequent decisions. One of them is *B.C. Chaturvedi v. Union of India* [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] .

19. The reasoning of the High Court that when the Disciplinary Committee differed from the finding of the enquiry officer it is imperative to discuss the materials in detail and contest the conclusion of the enquiry officer, is quite unsound and contrary to the established principles in administrative law. The Disciplinary Committee was neither an appellate nor a revisional body over the enquiry officer's report. It must be borne in mind that the enquiry is primarily intended to afford the delinquent officer a reasonable opportunity to meet the charges made against him and also to afford the punishing authority with the materials collected in such enquiry as well as the views expressed by the enquiry officer thereon. The findings of the enquiry officer are only his opinion on the materials, but such findings are not binding on the disciplinary authority as the decision-making authority is the punishing authority and, therefore, that authority can come to its own conclusion, of course bearing in mind the views expressed by the enquiry officer. But it is not necessary that the disciplinary authority should “discuss materials in detail and contest the conclusions of the enquiry officer”. Otherwise the position of the disciplinary authority would get relegated to a subordinate level.”

A similar view was taken by the Hon'ble Apex Court in the case of ***Pravin Kumar Vs. Union of India and Ors.*** reported in **(2020) 9 SCC 471.**

20. Keeping in mind the propositions of law as enunciated in the aforesaid decision this Court finds that there is a little scope with regard to the concurrent findings of the Enquiry Authority, Disciplinary Authority and

Enquiry Authority with regard to charge no.1 is concerned in absence of any material that the findings of the aforesaid three authorities are wholly arbitrary and based on no materials available before them and that the present writ petitioner did not get any reasonable opportunity to meet the charge as framed against him.

21. In view of such this Court finds no reason to interfere with the findings of the Enquiry Authority, Disciplinary Authority and Appellate Authority with regard to charge no.1 i.e. with regard to the alleged irregularity in disbursing house building loans in favour of the aforementioned four customers of the bank.

22. Since this Court in exercise of its plenary power under Article 226 of the Constitution of India has quashed the charge no.2 as framed against the present writ petitioner, a question arises as to whether the punishment as imposed upon the writ petitioner is adequate or not and if the same is found to be not commensurated with the charge proved, what would be the next course of action for this Writ Court.

23. At this juncture this Court proposes to look to the reported decision of ***S.R Tewary vs. Union of India and Another*** reported in **(2013) 6 SCC 602** wherein the Hon'ble Apex Court expresses the following view:-

“24. The question of interference on the quantum of punishment has been considered by this Court in a catena of judgments and it was held that if the punishment awarded is disproportionate to the gravity of the misconduct, it would be arbitrary, and thus, would violate the mandate of Article 14 of the Constitution. In Ranjit Thakur v. Union of India [Ranjit Thakur v. Union of India, (1987) 4 SCC 611 : 1988 SCC (L&S) 1 :

(1987) 5 ATC 113 : AIR 1987 SC 2386] , this Court observed as under : (SCC pp. 620-21, paras 25 & 27)

“25. 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.

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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.”

(emphasis supplied)

25. In B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44 : AIR 1996 SC 484] , this Court after examining its various earlier decisions observed that in exercise of the power of judicial review, the court cannot “normally” substitute its own conclusion or penalty. However, if the penalty imposed by an authority “shocks the conscience” of the court, it would appropriately mould the relief either directing the authority to reconsider the penalty imposed and in exceptional and rare cases, in order to shorten the litigation, itself impose appropriate punishment with cogent reasons in support thereof. While examining the issue of proportionality, the court can also consider the circumstances under which the misconduct was committed. In a given case, the prevailing circumstances might have forced the accused to act in a certain manner though he had not intended to do so. The court may further examine the effect, if the order is set aside or substituted by some other penalty. However, it is only in very rare cases that the court might, to shorten the litigation, think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority.

26. In V. Ramana v. A.P. SRTC [(2005) 7 SCC 338 : 2006 SCC (L&S) 69 : AIR 2005 SC 3417] , this Court considered the scope of judicial review as to the quantum of punishment is permissible only if it is found that it is not commensurate with the gravity of the charges and if the Court comes to the conclusion that the scope of judicial review as to the quantum of punishment is permissible only if it is found to be “shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards.” In a normal course, if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority to reconsider the penalty imposed. However, in order to shorten the litigation, in exceptional and rare cases, the court itself can impose appropriate punishment by recording cogent reasons in support thereof.”

24. From the facts and circumstances as involved in this case and from the discussion as made (supra) it reveals that in the impugned memo dated 30.07.2014 the Appellate Authority has imposed the punishment of reduction of basic pay by two steps in the time scale of pay till his superannuation with a direction that the present writ petitioner would not earn increment of pay during the period of such reduction. However, such punishment is based upon proof of the aforementioned two charges which is however, now altered in view of discussion made (supra).

25. Since this Court has quashed the charge no.2 as against the writ petitioner the quantum of punishment sustained is required to be altered and in this regard the appropriate authority would be the Disciplinary Authority who may impose an alternative punishment in terms of Regulation 4(f) of Central Bank of India Officer Employees’ (Disciplinary and Appeal) Regulations, 1976.

26. It appears to this Court that if an order is passed directing the Disciplinary Authority to impose an alternative penalty that would be in justice to the present writ petitioner since that would again lengthen the litigation especially when the present writ petitioner has superannuated long back i.e. on 31.05.2015. In view of such this Court considers that justice would be sub-served if this Court imposes appropriate punishment upon the writ petitioner for the reasons recorded hereinabove.

27. This court thus directs the respondent-bank and its officials to impose following penalty upon the writ petitioner i.e. *“reduction of basic pay by one stage in the time scale of pay for a period of one year from the date of imposition of penalty by the Disciplinary Authority i.e. with effect from 11.04.2014 with a further direction that the writ petitioner will not earn increment of pay during the period of such reduction in terms of Regulation 4 (f) and Central Bank of India Officer Employees’ (Discipline and Appeal) Regulations, 1976.”*

28. In view of the alteration of punishment as indicated (supra) the respondent-bank is hereby directed to re-calculate residual retiral benefits/dues of the writ petitioner and to disburse the same in favour of the writ petitioner within a period of three months from the date of communication of this order.

29. With the aforementioned observation the instant writ petition is allowed in part and is disposed of.

30. However there shall be no order as to costs.

31. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(Partha Sarathi Sen, J.)