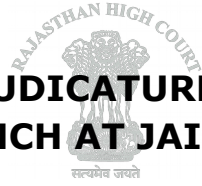




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 7612/2015

Smt. Shashi Bala Meena wife of Shri Narsi Lal Meena, aged about 46 years, resident of Plot No. C-4/233, Chitrakoot, Near Vaishali Nagar, Jaipur (Rajasthan)

-----Petitioners

Versus

1. Punjab National Bank through its Managing Director-Cum-Chief Executive Officer, Head Office, Plot No.4, Sector 10 Dawarka, New Delhi-110075
2. Deputy General Manager (HR) Cum Appellate Authority, Punjab National Bank, Sector 10 Dawarka, New Delhi-110075.
3. Assistant General Manager (HRM) and Disciplinary Authority, Punjab National Bank, Sector 10 Dawarka, New Delhi-110075.

-----Respondents

For Petitioner(s) : Mr. Akhil Simlote
Mr. Dikshant Jain
Mr. Ashvini Raj Tanwar
For Respondent(s) : Mr. Ajay Shukla
Mr. Raghav Sharma

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Reserved on : 11/05/2023
Pronounced on : 24/05/2023

Judgment

Reportable

(1) Instant petition has been filed by the petitioner with the following prayer:-

“It is, therefore, most respectfully prayed that your lordships may very graciously be pleased to accept and allow the writ petition,



called for the entire record relating to the present case and;

i) By an appropriate writ, order or direction in the nature whereof the impugned orders dated 15.1.2015 communicated to the petitioner on 17.01.2015 (Annexure-38) and the order dated 12.03.2015 (Annexure-40) of the Appellate Authority may kindly be quashed and set aside. Further the petitioner may kindly be reinstated in service with all consequential benefits with 24% interest.

ii) Any other order which this Hon'ble Court may deems fit and proper in facts and circumstances of the case may also be passed in favour of petitioner.

iii) Cost of the writ petition may kindly be awarded in favour of the petitioner."

(2) Counsel for the petitioner submits that during the entire service, the petitioner was transferred for 24 times and she joined the transferred places obeying the order/command issued by higher authorities. Counsel submits that during the service tenure of petitioner, she was granted three promotions and her services remained unblemished and during her service tenure, no penalty was imposed against the petitioner. Counsel submits that vide order dated 19.04.2014, the petitioner was transferred from Jaipur Branch to Alwar Branch and the petitioner was supposed to join at the transferred place on or before 29.04.2014. Counsel submits that due to her family circumstances, the petitioner could not join and she requested the authorities to retain her at Jaipur Branch. Counsel submits that when the request of petitioner was not considered, an application was submitted for the grant of privilege leave on medical grounds. Counsel submits that without considering the application, her relieving order was passed on 29.04.2014 with directions to join immediately and joining



leave are to be availed thereafter. Counsel submits that whenever relieving order is passed, some joining time is granted and the instant case is peculiar one, where directions have been issued to join immediately and avail the leave after joining. Counsel submits that the petitioner was served with a charge-sheet on 11.08.2014 and the enquiry commenced against the petitioner on 14.11.2014. Prior to the commencement of enquiry, the petitioner joined the transferred place on 01.11.2014. Counsel submits that the enquiry was completed in hasty manner within two days even after expiry of bank hours and the same continued till 8:45 PM on 15.11.2014. Counsel submits that the petitioner submitted reply to the enquiry report on 15.01.2015 and on the same day, the higher officials passed the impugned order without even perusing the reply submitted by the petitioner, which amounts to non-application of mind and it appears that they were pre-determined to pass the impugned order against the petitioner. Counsel submits that proper opportunity was not provided to the petitioner to produce her defence and the enquiry was completed in a hasty manner. Hence the total enquiry is quite unfair. Counsel submits that the total period of absence of the petitioner was hardly six months and looking to such period, the order impugned has been passed on a higher side and the same is quite disproportionate. Counsel submits that various leaves were lying unavailed in the Privilege Leave Account of the petitioner and the petitioner was entitled to claim her Privilege Leave, but without granting the Privilege Leave, order impugned has been passed against the petitioner. Counsel submits that the enquiry has been conducted in a malicious manner with ulterior object to compulsorily retire



the petitioner from service. Counsel submits that the petitioner wanted to examine two witnesses, namely Mr. N.L. Meena and Mr. Ashok Meena, but the respondents refused to examine these witnesses on a vague ground that these witnesses are not related to the charges, however, for defence, examination of these witnesses was necessary to prove the case of petitioner. In support of her contentions, she has placed reliance on the following judgments :-

- (i) B.C. Chaturvedi v. Union of India
(1995) 6 SCC 749
- (ii) Surya Prakash Gothwal v. State of Rajasthan
1980 W.L.N. 542
- (iii) State of Rajasthan v. Ganpat Ram
2017 (1) WLC (Raj.) (UC) 154

Counsel submits that the petitioner was suffering from Arthritis and the medical certificate / documents in this regard were also submitted, but the same were not considered. Counsel submits that under these circumstances, interference of this Court is warranted and the order impugned may be quashed and set aside and the respondents may be directed to reinstate the petitioner back in service.

(3) Per contra, counsel for the respondents opposed the arguments raised by the counsel for petitioner and submitted that the petitioner has alternative efficacious remedy of filing Review under Regulation 18 of the United Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976 (for short 'the Regulations of 1976'). Counsel submits that the petitioner was transferred on promotion as Branch Head at Alwar and she was supposed to join within the time stipulated, but the petitioner has failed to join the transferred place and remained on willful absence



for a period of six months in an unauthorized manner. Counsel submits that the petitioner had put pressure on the higher authorities to cancel her transfer order and also lodged a false FIR bearing no. 397/2014 with Jyoti Nagar Police Station, Jaipur against the officials under Sections 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, which resulted in Negative Final Report. Counsel submits that the witnesses namely, Mr. N.L. Meena and Mr. Ashok Meena were not relevant for the purposes of the charges, hence the petitioner was not allowed to examine these witnesses. Counsel submits that the medical certificate relied upon, was not valid as the same was issued by a private medical practitioner. Counsel submits that no medical certificate / document of any Government Hospital was produced to indicate the physical / medical condition of the petitioner. Counsel submits that Privilege Leaves cannot be claimed by an employee as a matter of right. Privilege Leaves are always granted as per the rules and regulations. Counsel submits that the enquiry was not conducted in hasty manner and the same was just and fair. Counsel submits that the scope of judicial review is limited as it has been held by Hon'ble Apex Court and this Court on several occasions that the scope of judicial review of an order of Compulsory Retirement is passed on subjective satisfaction of the employer and the scope of interference is narrow and restricted. Counsel submits that correct procedure was followed before passing the order impugned. Hence, there is no illegality in the order impugned and, therefore, this petition is liable to be



dismissed. In support of his contentions, he has placed reliance on the following judgments :-

- (i) Anil Kumar Upadhyay v. The Director General, SSB & Ors
2022 (4) Supreme 610
- (ii) Central Industrial Security Force v. HC (GD) Om Prakash
2022 (2) Supreme 597
- (iii) Inspecting Asst. Commissioner of Income Tax v. Somendra Kumar Gupta
1975 0 Supreme (Cal) 212
- (iv) State Bank of Patiala v. S.K. Sharma
(1996) 3 SCC 364
- (v) Bank of India v. Jagjit Singh Mehta
(1992) 1 SCC 306
- (vi) Suresh Pathrella v. Oriental Bank of Commerce
(2006) 10 SCC 572
- (vii) The General Manager (P) Punjab & Sind Bank v. Daya Singh
(2010) 11 SCC 233
- (viii) B.C. Chaturvedi v. Union of India
(1995) 6 SCC 749
- (ix) Chairman & Managing Director, United Commercial Bank v. P.C. Kakkar
(2003) 4 SCC 364

(4) In rejoinder, counsel for the petitioner submitted that though provision of filing Review is there in the Regulations of 1976, but the petitioner has already availed the statutory right of appeal and the same was dismissed by the Appellate Authority and there was no reason to file a Review before the Reviewing Authority. Counsel submits that the medical certificates submitted by the petitioner were issued by the Doctors who were serving in Government Services. Counsel submits that lodging of FIR against the officials of the Bank was not a part of the Disciplinary



Enquiry, hence the respondents cannot be allowed to raise such arguments to oppose the instant writ petition. Counsel submits that looking to the absence of the petitioner, disproportionate penalty order has been passed by giving compulsory retirement to the petitioner. Counsel submits that the judgments cited by the counsel for the respondents with regard to the scope of interference of this Court in respect of compulsory retirement, are not applicable in the instant case because in those cases the employees were found to be dead wood and accordingly, the order of compulsory retirement was passed, while in the present case, the situation is quite different.

(5) Heard and considered the submissions made at the Bar and perused the material available on the record.

(6) This fact is not in dispute that the petitioner was posted as Senior Manager (op), at Jaipur Branch of the respondent Bank and she was transferred to Alwar Branch to join as Senior Manager vide order dated 19.4.2014. This fact is not in dispute that the petitioner submitted a representation on 21.4.2014 to the respondents to cancel her transfer order and adjust her at Jaipur looking to her family circumstances. This fact is also not in dispute that vide order dated 29.4.2014 the respondents relieved the petitioner to join the Alwar Branch immediately, but the petitioner did not join at Alwar Branch and submitted several applications for grant of Privilege Leave (for short "P.L.") on medical grounds along with medical certificates issued by Medical Officers. This fact is also not in dispute that none of the applications of the petitioner were accepted and repeatedly the respondents directed her to join at Alwar Branch. But the



petitioner did not join the transferred place of posting. Hence, on 11.8.2014 a charge-sheet was issued against the petitioner under Regulation 6 of the Regulations 1976 with following charges :-

"Articles of charge:

During the tenure of your service as Sr. Manager at Bank's Jaipur branch from 31.08.2012, you have committed the under mentioned irregular acts;

1. You have failed to comply with the instruction issued by Jaipur Regional Office. The DGM & Chief Regional Manager, Jaipur Region had issued Order No. CRMO/ADMN/11/2014 dt. 19.04.2014 transferring you from Bank's Jaipur Branch to Alwar Branch and accordingly you had been released from Jaipur Branch on 29.04.2014. However, so far you have not joined at the transferee Branch and thus have violated the lawful order of superior authority.

2. You have been remaining unauthorisedly absent since 30.04.2014 without any leave being sanctioned to you by the competent authority in utter disregard to the Bank's norms/guidelines.

3. You have invited and attempted to bring the outside influence to bear upon the superior authority and communicated directly with the top executive of the Bank in respect of matter pertaining to arranging for cancellation of your transfer to Alwar Branch.

Thus you have committed several irregular acts, in utter disregard to the Bank's norms/guidelines in spite of lawful and reasonable instructions of your superior authorities and thereby you have failed to discharge your duties with utmost devotion, diligence and maintaining the good conduct and discipline in contravention of Regulations 3(1), 3(2), 12, 13(1) & 13(2) of United Bank of India Officers' Employees (conduct) Regulations, 1976; thereby committing misconducts in terms of Regulation 24 of the said Regulations."

(7) The petitioner submitted reply to the charge-sheet and denied the allegations levelled against her and she joined her duties at the Alwar Branch on 01.11.2014. Thereafter, enquiry proceedings were initiated and commended against her on 14.11.2014 and completed on 15.11.2014. The petitioner requested the Enquiry Officer to call her two witnesses, namely

- (i) Mr. N.L. Meena (husband of the petitioner) and
- (ii) Mr. Ashok Meena (Senior Manager of SBBJ).



The Enquiry Officer did not call the witnesses by observing that the charges mentioned in the charge-sheet does not require their evidence.

(7.1) Counsel for the petitioner submitted that the enquiry was concluded in a hasty manner without giving fair opportunity to lead defence evidence to the petitioner, hence the whole enquiry is vitiated as the same has violated the principles of natural justice.

(8) This court finds no force in this argument of the petitioner because these two witnesses were not related to the allegations mentioned in the charge-sheet, hence they were not called in defence evidence. There was no illegality in the procedure adopted by the Enquiry Officer to complete the same in two days because under the Regulations 1976, no period has been prescribed to complete the enquiry in a particular period.

(9) Now this court proceeds to deal with the other argument of petitioner that petitioner submitted reply to the Enquiry Report on 15.01.2015 and on the same day the Disciplinary Authority passed the impugned order without reading the reply, hence there was total non-application of mind of the Authority.

(9.1) Perusal of the reply indicates that it was submitted before the Disciplinary Authority on 13.01.2015 but the receipt was given on 15.01.2015. Meaning thereby that the reply was submitted on 13.01.2015 that is why even in the index of this writ petition the date of submitting reply has been mentioned by the petitioner herself as "13.01.2015". The typed reply (Annexure-37)



indicates the date as "13.01.2015". Hence, it is clear that the reply was submitted by the petitioner on 13.01.2015 and after perusing the whole contents of the reply, the order impugned has been passed by the Disciplinary Authority.

(9.2) Now the questions remain for adjudication of this court is that "Whether for absence of six months, the punishment of "compulsory retirement" is proper or disproportionate?"

(9.3) For adjudicating this fact, the whole service career of the petitioner is required to be seen.

(9.4) Perusal of the record indicates that the petitioner was appointed as clerical staff in the month of December 1989 and thrice she was promoted on the higher posts i.e. on the post of JMG Scale-I, MMG Scale-2 and MMG Scale-3 (Senior Manager). And during her tenure of twenty-five years of service, the petitioner was transferred to different Branches of the Bank on several occasions and she obeyed the commands and the order and joined the transferred places of her posting. Her service career in this period remained unblemished and no Departmental or Disciplinary Enquiry was initiated against her and no penalty of any kind was imposed upon her.

(9.5) But, at the same time this fact is not in dispute that the petitioner was transferred on 19.04.2014 to join at Alwar Branch as Senior Manager and she did not join at the transferred place of posting till 01.11.2014 and she remained absent for about six months i.e. w.e.f. 30.4.2014 to 01.11.2014. Though the petitioner submitted several representations to reconsider her case and for cancellation of her transfer at Alwar Branch on



account of her family and medical circumstances, but her request was not accepted by the respondent Bank and repeatedly she was directed to join at Alwar branch and when she failed to join, the respondents issued charge-sheet for her such conduct of unauthorised absence and after holding enquiry, the punishment of compulsory retirement was given to her.

(10) This court is conscious enough about the scope of interference with the decision of Disciplinary Authority. The scope of interference is very narrow and limited in such like matters, but the High Court has powers of moulding the relief in case where the punishment/penalty imposed shocks the judicial conscience.

(10.1) Hon'ble Apex Court in the case of B.C. Chaturvedi (supra), has held in paras 12, 2 and 5 as under :-

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held that proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have never reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould



the relief so as to make it appropriate to the facts of each case.”

“2. This appeal and the companion appeal filed by the Union of India arise from the order of the Administrative Tribunal in O.A. No. 609 of 1986 dated March 14, 1989. Appellant's integrity, while he was working as Income-tax Officer, had come under cloud. On an investigation made by the C.B.I., it had stated to the respondent that though the evidence collected during investigation disclosed that the appellant had assets disproportionate to his known source of income, as the evidence was not strong enough to lay prosecution under Section 5(1)(e) of the Prevention of Corruption Act, 1947 (for short, 'the Act'), the competent authority might proceed against the appellant in a departmental inquiry.”

“5. While resisting the contention, the learned Counsel for the Union argued that the Tribunal was not empowered to appreciate the evidence nor to consider the evidence on merits to reach a finding whether the appellant was in possession of disproportionate assets. The Tribunal went wrong in appreciating the evidence. The disciplinary authority had undoubted power and authority to impose punishment. On the facts found by the Inquiry Officer and disciplinary authority that the appellant was in possession of the assets disproportionate to the known source of his income, the Tribunal was unjustified in interfering with the punishment of dismissal from service, and ordering for compulsory retirement, instead.”

(10.2) Clause 13 of the United Bank of India Officer Employees' (Conduct) Regulations, 1976 says that no officer employee shall absent himself /herself from his /her duty without having leave / permission of the Competent Authority. This Clause further says that the officer employee shall ordinarily remain absent in case of sickness without submitting a proper medical certificate.

(10.3) Here in this case, the petitioner submitted several applications for grant of P.L. on medical grounds and medical certificates of the Medical Officers were also submitted. However, the same were not accepted by the Bank and finally it was concluded that the petitioner remained willfully absent w.e.f. 30.04.2014 till the date of issuing charge.



(10.4) It is settled proposition of law that an employee is bound to carry on the order of transfer and he /she is duty bound to join at the transferred place of posting. Such an employee has no right to remain absent without leave. Such conduct of remaining absent without leave, shall not be tolerated and such person should suffer the punishment. But it is not necessary to be so harsh as to throw him /her out of service.

(10.5) The doctrine of proportionality is thus well recognised concept of judicial review and if it is found that the punishment is disproportionate, then it remains open for the court to interfere under its limited scope of judicial review.

(10.6) The principles of proportionality of punishment vis-a-vis misconduct have been recognised by the Courts of various European countries as well as British Courts. It has time and again been held that if the punishment imposed on an employee is out of proportion, the Court has power to interfere with the same.

In Council of Civil Service Unions v. Minister for the Civil Services (1984) 3 All. E.R. 935, it has been held:

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

Their Lordships of the Supreme Court also recognised the theory of proportionality of punishment when they said that "an order



imposing punishment, which is shockingly disproportionate or is highly excessive having regard to the gravity of misconduct, is liable to be declared as arbitrary and thus violative of Articles 14 and 16 of the Constitution of India."

(10.7) In Bhagat Ram v. State of Himachal Pradesh 1983-II-LLJ-1, the Apex Court held: (P-7) "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".

(10.8) Hon'ble Apex Court in the case of Chairman cum Managing Director, Coal India Limited v. Mukul Kumar Choudhuri (2009) 15 SCC 620, has dealt with the doctrine of proportionality and the limited scope of High Court under judicial review in paras 19, 20, 21 and 22 as under :-

19. The doctrine of proportionality is, thus, well-recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision-maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

20. One of the tests to be applied while dealing with the question of quantum of punishment would be : would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.

21. In a case like the present one where the misconduct of the delinquent was unauthorized absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desired to disobey the order of higher authority or violate any of the Company's Rules and Regulations but the reason was purely personal and



beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations.

22. Ordinarily, we would have sent the matter back to the appropriate authority for reconsideration on the question of punishment but in the facts and circumstances of the present case, this exercise may not be proper. In our view, the demand of justice would be met if the Respondent No. 1 is denied back wages for the entire period by way of punishment for the proved misconduct of unauthorized absence for six months."

(11) In fact, the Hon'ble Supreme Court has held that in case a quantum of penalty, there should be compelling and strong circumstances which must be recorded and such interference cannot be on the basis of misplaced sympathy and generosity. Considering the said concept of rendering justice, this court has no hesitation to hold as far as the present case on hand is concerned, that interference is called for, which is not based on misplaced sympathy or generosity, but on the basis of rendering equitable justice which is a hallmark of judicial review by this court which is exercising its constitutional jurisdiction under Article 226 of the Constitution of India.

(12) This court, as stated above, has to take into consideration the interest of both the employee and the management while administering justice without being unduly influenced by any sympathetic consideration. On the basis of over all facts and circumstances as discussed and narrated above, this court is of the considered view that there must be fairplay in all administrative decisions, particularly in the matter of imposing punishment, when it takes away the very livelihood of the



employee, which is not only going to affect him /her, but also affect his /her family members.

(13) Looking to the peculiar facts and circumstances of the present case, and looking to the past /previous record of twenty-five years of unblemished service career of the petitioner and looking to the fact that several Privilege Leave were there in account of the petitioner and she submitted several applications for grant of P.L. on medical grounds and looking to the fact that the petitioner joined the transferred place of posting at Alwar Branch on 01.11.2014 and remained posted and continued there till passing of her order of compulsory retirement, the punishment order is harsh. The judgments cited and relied by the respondents are not applicable in the facts of this case.

(14) Bearing in mind the celebrated doctrine of proportionality, the impugned order dated 15.01.2015 and the appellate order dated 12.03.2015 are quashed and set aside. The matter is remitted back to the appropriate authority for reconsideration on the question of punishment and pass appropriate orders within a period of three months from the date of receipt of a certified copy of this order.

(15) Consequently, this petition is allowed in part. The respondents are directed to reinstate the petitioner forthwith but she will not be entitled to any back wages from the date of her compulsory retirement till reinstatement.

(16) Parties to bear their costs.

(ANOOP KUMAR DHAND), J.

MR/db/