

(2025) 04 OHC CK 1350
In the Orissa High Court
Case No : Writ Petition (C) No. 832 Of 2021

Baladev Panda

APPELLANT

Vs

Chief General Manager, State Bank of India Vs

RESPONDENT

Date of Decision : 23-04-2025

Acts Referred:

Constitution of India, 1950 — Article 226, 227

State Bank of India Officers Service Rules (SBIOSR), 1992 — Rule 67(e), 67(f), 67(g), 67(i), 68(3)(iii)

Citation : (2025) 04 OHC CK 1350

Hon'ble Judges : V. Narasingh, J

Bench : Single Bench

Advocate : S.S Das, D.K Mishra

Final Decision : Disposed Of

Judgement

V. Narasingh, J

Heard Mr. S.S Das, learned senior counsel instructed by Mr. Modi, learned counsel for the Petitioner and Mr. D.K Mishra, learned counsel for the Opposite Parties.

1. The Petitioner who was working as Junior Management Grade, Scale-I (JMGS-I), State Bank of India, Buxibazar Branch, Cuttack assails the orders passed by the Appointing Authority as well as the Appellate Authority at Annexures-8 & 9 respectively imposing the punishment of Removal from service which is one of the major penalties in terms of the Rule 67(g) of State Bank of India Officers Service Rules (SBIOSR), 1992.

It is apt to note here that, earlier assailing the order of "dismissal", which was affirmed by Hon'ble Single Judge of this Court in W.P(C) No.18797 of 2019, the Petitioner preferred Writ Appeal No.372 of 2017 and in terms of the order dated 07.01.2019 in the said Writ Appeal, the impugned orders at Annexures-8 and 9 altering the punishment of "Dismissal" to removal" has been passed which is

challenged in the present Writ Petition.

2. Brief facts germane for just adjudication are indicated hereunder;

The Petitioner was working as Officer Junior Management Grade Scale-1 and during his incumbency as Assistant manager (advances) at Buxi bazar branch was departmentally proceeded for the allegation of irregularities at fraudulent withdrawal to the tune of Rs.25.92 lacks from his two overdraft accounts. On the basis of such allegation a Departmental Enquiry as well as a criminal case was instituted.

3. In the Departmental Enquiry the Petitioner participated and the Disciplinary Authority recommended for imposition of penalty of reduction to a lower stage in the time scale of pay by five stages for a period of five years, not earning increments during the period of rigor but not postponing future increments on expiry of the period of rigor and not adversely affecting his pension in terms of Rule 67(f) of State Bank of India Officer Service Rules, 1992 (SBIOSR), the period of suspension of the Petitioner, who on the date of the order was suspension, directed to be treated as such i.e. not on duty.

At this stage it is apt to note that reference to Rule 67(f) of State Bank of India Officer Service Rules is a patent error in as much the punishment recommended comes within the hold of Rule 67(e) of SBIOSR. For convenience of reference and to avoid any confusion both rules 67(e) and 67(f) of SBIOSR are extracted hereunder:

"xxx xxx xxx

67. Without prejudice to any other provisions contained in these rules, any one or more of the following penalties may be imposed on an officer, for an act of misconduct or for any other good and sufficient reason:-

Minor Penalties

- (a) censure;
- (b) withholding of increments of pay with or without cumulative effect;
- (c) withholding of promotion;
- (d) recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Bank by negligence or breach of orders.

Major Penalties

- (e) reduction to a lower grade or post, or to a lower stage in a time scale;
- (f) compulsory retirement;
- (g) removal from service:

(h) dismissal.

xxx xxx xxx"

4. The recommendation of the Disciplinary Authority came for consideration of the appointing Authority and the Appointing Authority taking into account the seriousness of the charges and also the background that the Petitioner is working in a financial institution dealing with public money, felt that the infliction of penalty of dismissal would be appropriate and accordingly disagreed with the recommendation of the Disciplinary Authority.

5. Assailing such order, the Petitioner moved this Court in W.P.(C) No.18797 of 2009 and by order dated 30.08.2017, the Hon'ble single Judge dismissed the writ petition and while doing so the submission that the Petitioner in the meanwhile being acquitted in the criminal case was also taken note of.

6. Thereafter, Intra Court Writ Appeal No.372 of 2017 was filed by the Petitioner assailing the order of the Hon'ble single Judge passed in W.P(C) No. 18797 of 2019. In the Intra Court appeal, the Opposite Party-Bank appeared and after going through the materials on record, on a perspicuous analysis of the same, the Hon'ble Division Bench of this Court allowed the appeal in part. For convenience of reference the operative portion of the order dated 07.01.2019 in W.A No.372 of 2017 is culled out hereunder:

"xxx xxx xxx

Hence, we are inclined to allow the appeal in part. We set aside the judgment passed by the learned single Judge in W.P(C) No.18797 of 2009 and remand the matter back to the Disciplinary Authority to reconsider the matter after affording reasonable opportunity to the appellant

The appellant shall produce the certified copy of this order before the Disciplinary Authority on 24.01.2019 and on such an event the Disciplinary Authority i.e., the opposite party no.3 shall reconsider the matter and inflict punishment which will be in commensurate with the misconduct allegedly made against the appellant and the mitigating circumstances. With the aforesaid observation, the writ appeal is disposed of.

(Emphasized)

xxx xxx xxx"

7. It is apt to note at the cost of repetition that the Division Bench while directing the Opposite Parties to reconsider the matter went on to observe that punishment should be commensurate with the alleged misconduct "and the mitigating circumstances".

8. Pursuant to such direction of this court in the Writ Appeal, the Appointing Authority passed the following order at Annexure-8.

"xxx xxx xxx

in the above backdrop, the ends of justice would be adequately met if the earlier punishment of "Dismissal" is commuted to "Removal" which is to be imposed on Sri Panda in terms of Rule 67

(i) of State Bank of India Officer's Service Rules 1992, which I hereby do in terms of Rule No. 68(3) (iii) *ibid* which will be effective from the date of acknowledgement of original "Dismissal" order i.e. 22/05/2008. Further, the period of suspension of Shri Panda is to be treated as such i.e. "not on duty"

xxx xxx xxx"

9. While considering Petitioner's appeal, the Appellate Authority vide Annexure-9 after taking into account all the circumstances and the misconduct did not interfere with the order passed and rejected the prayer of the Petitioner for reconsideration and thereby the order of the Appointing Authority at Annexure-8 altering the punishment for "Dismissal" to "removal" was affirmed which, is the subject matter of challenge before this Court in this Writ Petition, as already noted.

10. Learned senior counsel Mr. Das, appearing for the Petitioner, at the outset, submits with vehemence that the alleged impropriety is in fact is no offence in as much as the allegation against the Petitioner is of overdrawal. And, admittedly there is no pecuniary loss to the bank and the Authorities did not consider the overwhelming circumstances which compelled the Petitioner to resort to the same.

10A. Hence, it is submitted that the initial punishment as imposed would sub serve the ends of justice. And, to fortify his submission learned senior counsel has relied on the following judgments on the question of proportionality and regarding the power of this Court to exercise jurisdiction in a matter of punishment imposed in a departmental proceeding.

10B. Relying on the judgment of the Apex Court in the case of *Asstt. General Manager, SBI Vrs. Thomas Jose And Another*, reported in (2000) 10 SCC 280, and the order of the learned single Judge of this Court in the case of *Nilamani Jal vrs. Collector, Bolangir and two others*, reported in 2016 (ii) OLR 190 it is the submission of the learned senior counsel for the Petitioner that the word "consider" in the light of the directions of the Division Bench in Writ Appeal has to be given its full play and not a mechanical appreciation as has been done in the case at hand.

10C. The judgment of the Apex Court in the case of *Ranjit Thakur Vrs. Union of India and others*, reported in AIR 1987 Supreme Court 2386, more particularly paragraph-9 thereof wherein while considering the order passed in Court-Martial, contours of judicial review, has been succinctly stated and is respectfully quoted hereunder:

"xxx xxx xxx

9. Re: contention (d): 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 A 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 B 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 Weekly Law Reports 1174 (HL) 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 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'. 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..... E In Bhagat Ram v. State of Himachal Pradesh, A.I.R. 1983 SC 454 this Court held:

"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.

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.

xxx xxx xxx"

10D. Further to buttress his argument on the question of proportionality, which was imposed in terms of the Army Act, reliance was placed on the judgment of the Apex Court in the case of Naik Sardar Singh Vrs. Union of India and others, reported in AIR 1992 Supreme Court 417.

11. Per contra, the learned counsel for the Bank, Mr. Mishra, submits that admittedly the Petitioner was dealing with public money and was holding responsible post and so far as the delinquency as committed by the Petitioner is concerned, evidently the Division Bench did not notice any irregularity committed in the Departmental Proceeding, culminating in the imposition of punishment of

"Dismissal". As such, taking into account the order passed by the Division Bench, the order of dismissal was converted to removal, which is one of the punishment as envisaged in the rules and, therefore, there is no irregularity and/or illegality warranting interference of this Court, in exercise of plenary jurisdiction.

11A. He further submits that this Court cannot sit in appeal over the punishment passed in the Enquiry which has stood the test of the judgment passed by the Division Bench. It is his further submission that interference as sought is beyond the purview of time tested norms of judicial review and more so since by no stretch of imagination can it be said that the same is "disproportionate" much less "shockingly disproportionate". Hence, the writ petition is liable to be dismissed.

11B. So far as the Judgment cited at the Bar regarding the proportionality of punishment, it is submitted by the learned counsel Mr. Mishra, referring to the judgment of the Apex Court in the case of Haryana Financial Corporation Vrs. Jagdamba Oil Mills reported in (2002) 3 SCC 496 as well as the leading judgment of the Apex Court in the case of Islamic Academy of Education and another Vrs. State of Karnataka and others reported in (2003) 6 SCC 697 that "Judgments" are to be read in the context in which they have been rendered and cannot be cited as "Euclid's Theorem".

12. There is no dispute at the bar that so far as the delinquency of the Petitioner is concerned that had attained finality in terms of the order passed by the Division Bench. Now, the only question that is to be answered by this Court is regarding the proportionality of punishment, referring to the delinquency as alleged.

13. It is apposite to note that so far as the financial loss is concerned, it is admitted at the bar that there is no pecuniary loss as such to the Bank, since the same has been fully made good by the Petitioner and the Petitioner has also been acquitted by the judgment dated 21.11.2012 in T.R. Case No.31 of 2007.

The said judgment of the acquittal has attained finality, as agreed at the Bar.

14. The submission of the learned senior counsel in that the alleged delinquency relates to overdrafts (OD). It is submitted that as an Officer of the Bank the Petitioner is entitled to avail such facility and such ODs can only be availed with the approval of the higher ups merits consideration. And, it is worth noting that this Court in Writ Appeal after taking into account the contention of both, the Bank as well as the delinquent Petitioner, categorically, directed that punishment should be commensurate with the misconduct allegedly committed and this Court further directed that the mitigating circumstances ought to be taken into account.

15. At this stage it is worthwhile to refer the order of this Court in Nilamani Jal (supra) wherein the Hon'ble Single Judge referring to the dictum of the Apex Court in Chairman, LIC of India & Ors. Vs. A. Masilamani reported in (2013) 6 SCC 530 has dealt with the import of the word "consider" and referring to the

dictionary meaning held as under;

"xxx xxx xxx

19. The word "consider", is of great significance, Its dictionary meaning of the same is, "to think over", "to regard as", or "deem to be". Hence, there is a clear connotation to the effect that, there must be active application of mind. In other words, the term "consider postulates consideration of all relevant aspects of a matter. Thus. formation of opinion by the statutory authority, should reflect intense application of mind with reference to the material on record. The order of the authority, should reveal such application of mind. The appellate authority cannot simply adopt the language employed by the disciplinary authority, and proceed to affirm its order.

xxx xxx xxx"

16. It is also worth noting that in the case of Assistant General Manager, SBI (supra), the matter related to a Bank Employee, who not only indulged in forging of account but also unauthorized withdrawal of cash and the matter being carried in appeal by the Bank, the Apex Court, held thus ;

"xxx xxx xxx

Misappropriation by an employee of a bank is misappropriation of public moneys and must be treated very differently.

Misconduct such as this cannot be treated as lightly as it has been done.

xxx xxx xxx"

But at the same time felt that reinstatement without any increment for a period of 10 years, with all cumulative circumstances, would serve the ends of justice.

17. In the case of Ranjit Thakur(supra), which has already been quoted extensively hereinabove, the power of judicial review has been dealt with as noted. In the said judgment the Apex Court reiterated as under;

"xxx xxx xxx

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 A vindictive or unduly harsh.

xxx xxx xxx"

(Emphasized)

18. Taking a cue from the language as used by the Apex Court, it is the submission of the learned senior counsel that when the decision was not taken in terms of the order passed in the Writ Appeal, he moved this Court by filing a

contempt Petition and on receipt of notice in the contempt petition, the impugned order altering the punishment from dismissal to removal has been passed mechanically and out of vindictiveness.

19. Such submission is opposed with vehemence by the learned counsel Mr. Mishra for the Bank reiterating his stand and referring to the very order on which reliance has been placed by the learned Senior counsel for the Petitioner that the petitioner being an employee of bank and the working norms that is normally expected from him is of the highest order and since his guilt has been established in a proceeding and the procedure as followed having stood the scrutiny of this Court twice, there is no scope for interference.

20. The other judgment referred to in Sardar Singh(Supra) also deals with the question of 'proportionality' as part of judicial review and the Apex Court has observed

"xxx xxx xxx

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.

xxx xxxxxx"

21. Referring to the said judgments, learned senior counsel Mr. Das, submits that the Division Bench of this Court while exercising its appellate jurisdiction had specifically directed that the punishment should commensurate with the delinquency and mitigating circumstances ought to be taken into account, but by imposing a punishment of removal which is a major punishment the Authorities have followed, the directive of this Court in writ appeal in its violation.

22. On a conspectus of materials on record, this Court is of the view that the punishment of removal as imposed by Annexure-8 and upheld by the Appellate Authority vide Annexure-9 is disproportionate to the delinquency, taking into account the blemishless career of the Petitioner for almost two decades and half, the overwhelming circumstances which compelled him to make the withdrawal on account of his son's illness which is graciously not disputed, also in the light of the undisputed fact that the Bank did not suffer any pecuniary loss and the acquittal of the Petitioner in the criminal case.

23. On due consideration of the defence relating to all the allegations which were five in number, the Enquiry Officer had recommended for punishment of reduction to lower scale by five stages for a period of five years with no increment during the period of rigors but not postponing increments on expiry of period of rigor and not adversely affecting his pension.

24. In the backdrop of the allegations as has been made, taking into account the

enquiry report, on evaluation of Petitioner's defence and the judgments cited at the Bar relating to the proportionality of punishment, this Court is persuaded to hold that reduction to a lower stage in time scale for a period of seven (7) years, with not earning increment till the date of his retirement without adversely affecting Petitioner's pension would sub serve the ends of justice. The period of suspension of the Petitioner, Officer JMGS-I (U/S) will be treated as such i.e. not on duty.

And, it is accordingly so directed.

25. The Opposite Parties are called upon to pay the emoluments of the Petitioner after taking into account the amounts which have already been disbursed.

The exercise in this regard shall be completed by the Opposite Parties within a period of four months from the date of receipt/production of the Judgment.

26. Accordingly, the writ Petition stands disposed of. No costs.

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