

(1997) 03 AHC CK 0069
In the Allahabad High Court
Case No : C.M.W.P. No. 11349 of 1996

B.P. Yagyik

APPELLANT

Vs

Reviewing Authority/Appellate Authority/Dy. Managing
Director and Corporate Development Officer (Appellate),
State Bank of India and Others

RESPONDENT

Date of Decision : 10-03-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1997) 03 AHC CK 0069

Hon'ble Judges : Palok Basu, J;O.P. Garg, J

Bench : Division Bench

Advocate : H.P. Mishra, for the Appellant; A.K. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

O.P. Garg, J.—The Petitioner, B. P. Yagyik, has filed this petition under Article 226 of the Constitution of India to challenge the order of his removal from service.

2. The wood-cut profile of the case is : the Petitioner, B. P. Yagyik was initially appointed as a clerk in the State Bank of India on 27.1.1962. In course of time he came to be promoted in officer Grade-I in the year 1978. Following detection of several irregularities committed by him while functioning as Officer/Branch Manager at Ram Nagar (Varanasi) Branch and also as Officer JMGS-I at Johnstongang (Allahabad) Branch, he was placed under suspension w.e.f. 11.3.1983. A charge-sheet dated 19.5.1983 was issued to him which contained as many as 11 charges. In substance, the charges related to irregular demand draft purchase of cheques, local printing of stationery far in excess of discretionary powers despite Controlling Authority's specific advices to the contrary, disbursal of loans without proper documentation, irregular release of collateral security and negligently passing for payment a forged cheque. After conclusion of enquiry, it was found that out of eleven charges, three charges were proved while five were partly proved. Three of the charges were not

established against the Petitioner. The Chief General Manager, Lucknow local head-quarters, who was the disciplinary authority, concurred with the finding of the Enquiry Officer and on 29.3.1986 imposed the extreme penalty of dismissal of the Petitioner from service. Against the decision of the disciplinary authority imposing the penalty of dismissal, Sri Yagyik preferred an appeal on 20.5.1986 before the appellate authority who after considering the matter modified the penalty of dismissal to removal from service vide order dated 5.10.1987. Sri Yagyik submitted a review petition to the Reviewing Committee. The said petition was rejected on 29.3.1990. Thus the order of removal from service became final.

3. The Petitioner challenged the order of removal from service by filing a Writ Petition No. 21442 of 1990. The said writ petition was allowed in part on 13.7.1995. The order dated 5.10.1987 passed by the appellate authority was quashed and the matter was remanded back to the appellate authority for decision afresh keeping in view the observations made in the body of the judgment. It was further directed that if the Petitioner applies for personal hearing, the appellate authority shall afford him an opportunity of hearing. The view taken in the aforesaid writ petition was that mere substitution of the word "dismissal" to the word "removal" speaks of non-application of mind to the controversy involved in the matter and that the appellate authority did not come to the independent conclusion in view of the decisions Bhagat Ram Vs. State of Himachal Pradesh and Others, and Ranjit Thakur Vs. Union of India (UOI) and Others, .

4. After remand, a fresh order has been passed on 15th January, 1996 by the appellate authority maintaining the penalty of removal from service. Aggrieved, the Petitioner has filed this petition with the prayer that the order dated 29.3.1986 passed by the disciplinary authority and the order dated 15.1.1996 passed by the appellate authority be quashed and the Respondents be commanded to reinstate the Petitioner in service and to pay the salary along with the arrears.

5. The Petitioner, Sri B. P. Yagyik addressed this Court in person and also submitted written arguments. On behalf of the Respondents Sri Arun Kumar Mishra was heard in opposition whereafter judgment was reserved. Since Sri Misra also filed written arguments, Sri B. P. Yagyik and Sri Misra were again heard orally as prayed.

6. The main thrust of the Petitioner is that after passing of the order . dated 13.7.1995 by this Court in Writ Petition No. 41442 of 1990, the Respondents were bound to reinstate the Petitioner in service and consequently the Respondents have failed to comply with the order of the Court. It was also urged that the impugned order dated 15.1.1996 passed by the appellate authority is illegal, unwarranted and without application of mind, and in any case, the penalty of removal from service is not in proportion to the established guilt of the Petitioner. The learned counsel for the Respondents repelled the various submissions made by the Petitioner.

7. To begin with, it would be proper to consider the import of the order dated 13.7.1995 passed by this Court in Writ Petition No. 21442 of 1990. As said above, a final order of removal from service was passed against the Petitioner. This order was challenged by means of a Writ Petition No. 21442 of 1990. The Court took the view that mere substitution of the word "dismissal" to the word "removal" as contained in the order of the appellate authority itself speaks of the non-application of mind to the controversy involved in the matter. In the opinion of the Court, it was nothing but jugglery of words and since the appellate authority did not come to the independent conclusion, the order dated 5.10.1987 passed by the appellate authority cannot be sustained in view of the law laid down in the two rulings of the Hon"ble Supreme Court quoted above. Accordingly, the Court quashed the order dated 5.10.1987 and the matter was remanded back to the appellate authority for decision afresh keeping in view the decision referred to above. It was also directed that the Petitioner shall be afforded an opportunity of personal hearing. The submission of the Petitioner now before this Court that in view of the aforesaid order the Respondents were bound to reinstate him in service is without any merit. The Petitioner, it appears, is labouring under misconception of facts. The effect of the order dated 13.7.1995 passed by this Court simply was to direct the appellate authority to pass a fresh order after affording an opportunity of personal hearing to the Petitioner.

8. It is an indubitable fact that the Petitioner had appeared before the appellate authority and availed of an opportunity of personal hearing. The submissions made by the Petitioner before the appellate authority were taken into consideration along with the grounds of appeal. We have thoroughly scrutinised the order passed by the appellate authority on 15.1.1996 (Annexure VII to this writ petition) and find that a detailed and reasoned order has been passed. Each one of the established charges against the Petitioner have been thrashed out. The appellate authority has rightly come to the conclusion that the Petitioner was guilty of serious misconduct rendering him unfit to continue in the service of the Bank.

9. The next submission of the Petitioner is that the punishment handed down to him is so strikingly disproportionate to the gravity of the charges established against him as to call for and Justify interference. The Petitioner relying upon the two decisions of the Hon"ble Supreme Court referred to above, urged that the order of removal passed against him be quashed.

10. It is well established principle of law, which admits of no doubt, that in a petition under Article 226 of the Constitution of India, this Court does not function as a court of appeal over the findings of disciplinary authority. Similarly, the reasons which induced the punishing authority, if there has been an enquiry consistent with the prescribed rules, are not Justiciable nor is the penalty open to review by the Court. If the order of imposition of penalty may be supported on any finding as to substantiate misconduct or misdemeanour for

which punishment can lawfully be imposed, it is not for the court to consider whether that ground alone would have weighed with the authority in imposing the penalty. The High Courts in a writ Jurisdiction do not exercise appellate power and it cannot, therefore, interfere with the question of punishment decided by the competent authority. This normal rule, however, is subject to an exception, i.e., where the finding is utterly perverse or the punishment imposed is disproportionate and so outrageous as to shock the conscience, when certainly this Court would step-in to rectify the mistake. This Is what precisely has been held in Bhagat Ram Vs. State of Himachal Pradesh and Others, as well as in Ranjit Thakur Vs. Union of India (UOI) and Others, . In the latter case, while dealing with the power of judicial review on the point, the Hon"ble Supreme Court observed as follows:

Judicial review generally speaking, is not directed against a decision, but is directed against the "decision making process." The question of 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 so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionate, 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 Bhagat Ram"s case referred to above, the Hon"ble Supreme Court took the view that 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 of India.

11. In the back-drop of the above law, now let us examine whether the punishment of removal from service imposed upon the Petitioner B. P. Yagyik is disproportionate to the gravity of the established misconduct on his part. The Petitioner was placed under suspension on 11th March. 1983 as it came to be detected that he committed several serious irregularities while functioning as Officer/Branch Manager at Ram Nagar (Varanasi) Branch and also as Officer JMGS-I at Johnstonganj (Allahabad) Branch. The charges related to irregular demand draft purchase of cheques, local printing of stationeries far in excess of discretionary powers despite controlling authority"s specific advices to the contrary, disbursal of loans without proper documentation, irregular release of collateral security and negligently passing a forged cheque. The defence taken by the Petitioner to the various charges, inter alia, was that the alleged irregularities came to be committed because he had no past experience in the field of advance and that he had simply followed the prevailing practice in dealing with the various transactions. This plea was not accepted by the appellate authority. The

Petitioner was looking after the work of advance until he assumed charge as Branch Manager. He had long experience of about two decades as he served the Bank in different capacities. He should have realised his responsibility in discharging the duties as the Branch Manager. He could not be allowed to take shelter of the plea that he was not conversant or experienced in the field of advance. His attempt to shift responsibility on his predecessor was also not appreciated. On going deeper into the matter, it has been found that in order to confer benefit on one K. D. Yagyik who was the proprietor of various Firms, viz., M/s. Shreema Industrial Corporation, M/s. Ex-Servicemen Corporation, M/s. Vishal Foods and M/s. Rinaku Commercial Corporation of which Smt. C. Yagyik wife of K. D. Yagyik was the proprietor, the facility of D. D. purchase (cheques) was allowed without making any appraisal of the firms credit, standing and need. Further, despite the fact that D. D. purchase facility earlier granted to the firm of which K. D. Yagyik was the proprietor, was discontinued by the previous Branch Manager, consequent upon the dishonour of D. Ds, the Yagyik couple was shown undue favour. Some instances of undue favour shown were by purchasing a large number of cheques drawn by K. D. Yagyik as proprietor of different firms at Varanasi and Calcutta and without ascertaining genuineness of the credit-worthiness of the borrower and without sanctioning a limit, continues to purchase D. Ds. despite dishonour of a large number of cheques. Creation of overdraft to the extent of Rs. 1,85,000 and odd. non-reporting of the purchase; granting of overdrafts, all of which were beyond his discretionary power. The Petitioner was further found guilty of allowing undue gains to M/s. Khan Enterprises by granting various credit facilities despite the fact that the earlier loans granted were running irregular and allowing cash payment of the term-loan and manipulating the loan papers; sanctioning a term loan of Rs. 1 lac to M/s. Bansal Bandhu without making any appraisal while regarding their proposal for a loan of Rs. 5,43,000. the regional office already raised certain queries. M/s. Swapnlok which was another proprietorship concern of M/s. Bansal Bandhu was also illegally allowed purchase of D. Ds. and grant of frequent overdrafts. Apart from those members, the Petitioner also flouted the instructions of the Controlling authority in making purchase and printing of stationery etc. Thus, tested, the conclusion of the Bank authorities that the Petitioner acted in an unbridled manner as Branch Manager; misused his official position to confer undue advantage to other and by his deliberate misdeeds, exposed the Bank to substantial financial loss and thus committed gross impropriety and serious misconduct blatantly flouting the rules and instructions of his superiors, Is inescapable. It follows, therefore, that there were serious aspersions against Petitioner's integrity and honesty and also that his loyalty upto his employer-Bank was doubtful. In the light of established serious misconduct on the part of the Petitioner, the penalty of removal from service cannot be termed as outrageous or disproportionate to the gravity of the proved misdemeanour. Therefore, it is not a case where the court should interfere with the order of punishment passed against the Petitioner.

12. In the result the writ petition fails and is accordingly dismissed with no order as to costs.