

(2015) 03 CAL CK 0036
In the Calcutta High Court
Case No : Writ Petition No. 4954(W) of 2009

Dilip Kumar Sarkar

APPELLANT

Vs

United Bank of India and Others

RESPONDENT

Date of Decision : 04-03-2015

Acts Referred:

Citation : (2015) 03 CAL CK 0036

Hon'ble Judges : Tapabrata Chakraborty, J.

Bench : Single Bench

Advocate : Asish Kumar Sanyal, Tarun Kumar Ghosh, Ujjal Kumar Bhattacharji and Suvasree Ghose, for the Appellant; R.N. Majumdar, Sourav Chakraborty and Supratim Bhattacharjee, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Tapabrata Chakraborty, J.—This writ application has been preferred challenging, inter alia, an order dated 3rd January, 2009 passed by the respondent No. 3.

2. As a prelude to the instant lis, it needs to be stated that the petitioner filed a writ application being W.P. No. 12410(W) of 2005 challenging, inter alia, the order of dismissal dated 15th March, 2005 passed by the respondent No. 5 and an order dated 19th May, 2005 passed by the appellate authority being the respondent No. 3 herein in the disciplinary proceeding which was initiated against the petitioner on the basis of a charge-sheet dated 25th March, 2004 issued by the respondent No. 5. Upon contested herein the said writ application was finally disposed of on 7th August, 2008 directing the petitioner herein to submit a fresh representation before the appellate authority with a prayer for reconsideration of the order of punishment, within a period of 4 weeks and the said appellate authority was directed to consider the matter afresh and to pass an appropriate order in accordance with law, after giving the petitioner of an opportunity of hearing. Pursuant to the said order dated 7th August, 2008 passed in the earlier writ application, the petitioner submitted a fresh representation to the appellate authority on 2nd September, 2008 and thereafter,

the respondent No. 3 passed an order dated 3rd January, 2009 refusing to interfere with the order of punishment of "dismissal without notice".

3. Mr. Sanyal, learned senior counsel appearing for the petitioner submits that the order of the respondent No. 3 refusing to interfere with the order of punishment imposed by the disciplinary authority has not been passed in strict compliance of the observations and directions contained in the order dated 7th August, 2008 and without appreciating the nuance of said order, the respondent No. 3 has rejected the petitioner's representation in a mechanical manner.

4. According to him, the mitigating factors indicated by the petitioner in the representation dated 2nd September, 2008 have not been considered by the respondent No. 3 and the order impugned dated 3rd January, 2009 is bereft of a comparative assessment of the necessary riders for the purpose of coming to the conclusion as to whether the imposition of the punishment of dismissal without notice was disproportionate.

5. He further argues that by the order dated 7th August, 2008, the Court, upon assessment of all facts arrived at a conclusion to the effect that "there is scope for fresh consideration of the punishment which had been inflicted on the writ petitioner" and in the backdrop of such categorical finding, the respondent No. 3 ought to have relaxed the punishment of dismissal without notice.

6. He further submits that the petitioner did serve the United Bank of India (hereinafter referred to as the said Bank) for about 30 years and no complaint and no allegations were levelled against the petitioner in course of his long tenure of service but such fact was totally ignored by the respondent No. 3 in course of consideration of the order of punishment.

7. Drawing the attention of this Court to the contents of the impugned order dated 3rd January, 2009, Mr. Sanyal submits that the same is nothing but a reiteration of the paragraphs contained in the earlier order of the appellate authority and the impugned order does not reflect any independent application of mind by the respondent No. 3 and such infirmities have vitiated the decision making process, warranting interference of this Court.

8. Per contra, Mr. Majumdar, learned senior advocate appearing for the respondents submits that the scope of the instant writ application is restricted to the issue as to whether the order dated 3rd January, 2009 passed by the respondent No. 3 suffers from any infirmity and as to whether the said respondent No. 3 has acted on the basis of the terms indicated in the order by which the matter was relegated to him for reconsideration of the order of punishment.

9. He further submits that in the backdrop of the charges which have been proved against the petitioner, question of relaxation of the order of punishment imposed by the disciplinary authority does not occasion inasmuch as it needs to be borne in mind that in banking business absolute diligence, integrity and

honesty is required to be preserved and in the event such discipline is not maintained, the confidence of public/depositors would be impaired and the petitioner, being a bank employee, is expected to be extremely cautious in his duties and having committed an offence, the petitioner cannot lament and seek sympathy from the Court more so when the petitioner's misconduct has lowered down the bank's prestige and image to the depositors.

10. In support of his contention, Mr. Majumdar has relied upon the following judgments:

1. Union Bank of India Vs. Vishwa Mohan, .
2. State Bank of India and others Vs. T.J. Paul, .
3. Tara Chand Vyas Vs. Chairman and Disciplinary Authority and Others, .

11. In reply, Mr. Sanyal submits that the punishment imposed is extremely harsh and it shocks the conscience inasmuch as having rendered services for a long tenure of 30 years the petitioner is being subjected to a punishment which tantamounts to deprivation of the entire pensionary benefits which have been earned by the petitioner on the rudiments of his past service.

12. He further argues that in a disciplinary proceeding charge of causing serious loss should be proved beyond doubt and not on merely probabilities or hearsay evidence and such a serious charge is required to be proved to the hilt as it brings civil and criminal consequences upon the employee concerned but such aspect of the matter has not been taken into consideration by the respondent No. 3 while issuing the order impugned in the instant writ application.

13. I have heard the learned advocates appearing for the respective parties and I have considered the materials on record.

14. A close perusal of the order dated 7th August, 2008 reveals that the Writ Court, in the backdrop of the entire factual scenario, was of the opinion that there is scope for fresh consideration of the punishment imposed and accordingly the matter was relegated to the appellate authority but the appellate authority failed to note the nuance of the order and misdirected itself in not considering the mitigating factors as indicated by the petitioner in his representation and arrived at an erroneous conclusion that the order imposing punishment does not require any interference.

15. Proportionality is "concerned with the way in which the decision-maker ordered his priorities; the very essence of decision making consists surely in the attribution of relative importance to the factors in the case".

16. It is well-settled that the punishment or penalty to be imposed must be commensurate with the gravity of misconduct. The authority while inflicting punishment must adhere to the doctrine of proportionality and cannot exercise the power in an arbitrary manner.

17. In all fairness and propriety demands that when major disciplinary punishment is sought to be inflicted, which would tantamount to dismissal from service, there should be absolute fair play in action, without even a tinge of mala fide motive. Sadly, this aspect of the matter is missing from the action taken by the authorities and the punishment imposed upon the petitioner is disproportionate to the charges alleged.

18. The petitioner at present is aged about 66 years and is having a family and the punishment as imposed is the highest punishment and the same affects the livelihood of the petitioner and his family but the order impugned does not reflect consideration of the said factors.

19. A perusal of the memorandum of settlement dated 10th April, 2002 reveals that the acts and omissions on the part of an employee which tantamount to "gross misconduct" has been discussed in Clause 5. The petitioner was charged of a misconduct under 5(j) which relates to doing any act prejudicial to the interest of the bank or gross negligence involving or likely to involve the bank in serious loss. Clause 5(k) relates to giving or taking a bribe or illegal gratification from a customer or an employee of the bank. The gravity of the misconduct under Clause 5(k) is certainly more than the gravity of misconduct under Clause 5(j) which contains an element of negligence. A negligent action cannot be construed to be equivalent to an act of taking bribe or illegal gratification and thus on the rudiments of a charge of negligence not involving any monetary loss, the petitioner could not have been imposed the severest of punishment of dismissal without notice under Clause 6(a) or the punishment under Clause 6(b) which relates to removal from service.

20. Measure, magnitude and degree of misconduct needs to be taken into consideration to determine and to weigh the proportion. The imposition of punishment is subject to judicial intervention if the same is exercised in a manner which is out of proportion to the fault. If the award of punishment is grossly in excess of the allegations made, it cannot claim immunity and makes itself amenable for interference under the limited scope of judicial review. In the instant case, there has been no allegation to the effect that the bank has suffered any monetary loss. The petitioner's conduct was irreproachable and that his understanding of responsibility and adherence to discipline was not questionable. Regard being had to the facts involved, the nature of post held by the petitioner and the conduct expected of him, I am of the opinion that the doctrine of proportionality is invocable in the instant case.

21. For the reasons discussed above I am of the opinion that the order impugned in the instant writ application needs to be interfered with and justice would be sub-served by modifying the penalty of dismissal without notice as imposed upon the petitioner.

22. Accordingly, the punishment of dismissal without notice as imposed upon the petitioner by the respondents is modified to a punishment of compulsory

retirement with superannuation benefits, i.e., Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment as provided under Clause 6(c) of the memorandum of settlement dated 10th April, 2010, on and from the date of dismissal without notice and the respondents are directed to calculate and disburse all consequential benefits to the petitioner, within a period of 8 weeks from the date of communication of this order.

23. In my opinion, such modification of punishment will meet the ends of justice in the facts and circumstances of the instant case.

24. With the above observations and directions, the writ application is disposed of.

25. There shall, however, be no order as to costs.

26. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.