

(2006) 09 SC CK 0016

In the Supreme Court Of India

Case No : Civil Appeal No. 575 of 2005

General Manager, Appellate Authority, Bank of India and
Another

APPELLANT

Vs

Mohd. Nizamuddin

RESPONDENT

Date of Decision : 07-09-2006

Acts Referred:

Citation : AIR 2006 SC 3290 : (2006) AIRSCW 4880 : (2007) 2 ALT 12 : (2006) 111 FLR 339 : (2007) 1 KLJ 568 : (2006) 3 LLJ 964 : (2006) 4 PLJR 213 : (2006) 9 SCALE 121 : (2006) 7 SCC 410 : (2006) SCC(L&S) 1663 : (2006) 7 Supreme 286

Hon'ble Judges : P. K. Balasubramanyan, J;H. K. Sema, J

Bench : Division Bench

Advocate : Gopal Jain, Nina Gupta, Shweta Chadha, Akanksha and Bina Gupta, for the Appellant; G. Ramakrishna Prasad, K.P. Kyalasanatha, Mohd. Wasay Khan, Syuodhan Byrapaneni and Venkat Subramaniam T.R., for the Respondent

Final Decision : Dismissed

Judgement

H.K. Sema, J.—Heard the parties.

2. This appeal is preferred by the General Manager, Appellate Authority, Bank of India. The challenge in this appeal is to the order dated 14.8.2003 passed by the Division Bench of the Andhra Pradesh High Court affirming the order of the Single Judge passed on 2.5.2003.

3. Briefly stated the facts leading to the filing of the present appeal are as follows.

The respondent joined the appellant-Bank as a Probationary Officer in 1972. He was thereafter promoted as Middle Management Officer-Grade II in 1981. The respondent unauthorisedly absented himself from duty with effect from 1.2.1994 onwards. By a letter dated 7.2.1994, he was asked to report for duty immediately. On 7.2.1994 the respondent applied for extraordinary leave from 1st February, 1994 to 31st March, 1994. He did not report for duty on 1.4.1994.

On 10.5.1994 the Bank requested the respondent to immediately report for duty. On 19.5.1994 the respondent instead of reporting for duty or replying the letter dated 10.5.1994 continued his unauthorized absence and opted for voluntarily retiring from the services of the appellant-Bank. In response to the request of the respondent the appellant-Bank by the letter dated 13.7.1994 and 8.11.1994 requested the respondent to appear for an exit interview to consider his request for voluntarily retirement. This was repeated by another letter dated 9.7.1996. In the interregnum the appellant-Bank decided to draw a disciplinary proceeding against the respondent. On 9.7.1996 the following charges were framed against the respondent:

1. Shri Md. Nizamuddin availed a loan of Rs. 80,000/- from Secunderabad Branch for purchase of vehicle. However, misutilised the funds so lent without actually purchasing any vehicle and subsequently deposited an amount of Rs. 95,120/- after a lapse of 2 years and 2 months to close the account.
2. Shri Md. Nizamuddin availed LTC advance of Rs. 39,780/- during October 1993, originally proposing to avail to LTC facilities during 16.09.1993 to 21.09.1993. However, availed LTC facilities during the period within he was unauthorisedly absent, and submitted claim to the branch. The claim, was therefore, not sanctioned. Mr. Nizamuddin, thereafter, did not refund the LTC advance availed by him. In this manner, he misutilised the advance of Rs. 39,780/-.
3. Shri Md. Nizamuddin remained unauthorisedly absent from duties from 01.02.1994 and submitted leave application dated 07.02.94 for extra ordinary leave from 01.02.1994 to 31.03.1994. Mr. Nizamuddin did not report for duties on 02.04.1994. The branch reminded him to report for duties vide letters dated 07.02.94 and 18.05,1994. The registered letters sent by the branch were returned undelivered. It is observed that Shri Md. Nizamuddin did not report for duties till date. In this manner Shri Nizamuddin remained unauthorisedly absent from duties and left head quarters without prior permission from the competent authority.

The aforesaid chargesheet was sent at the address of the respondent and it was received by the family member of the respondent, namely, Naseem Fatima, wife of the respondent, on 12.7.1996. Thereafter, by the letters dated 30.8.1996, 11.9.1996, 20.9.1996 and 7.10.1996 the appellant-Bank informed the respondent about the appointment of inquiry officer, and the date of inquiry proceeding. Since the respondent failed to participate in the inquiry proceeding held on 19.9.1996 the copies of the inquiry proceedings were sent to him, intimating him about the next date of inquiry proceeding. On 11.10.1996 the respondent in response to the letter dated 7.10.1996, contended that he had already submitted his resignation letter about three years back and the same was pending acceptance by the appellant-Bank. It was further stated that in the absence of any communication from the Bank on his resignation within the stipulated time, his resignation was deemed to have been accepted and the

respondent blatantly refused to participate in the inquiry proceedings. Thereafter, on 19.10.1996, 7.11.1996 and 21.12.1996 the appellant-Bank once again requested the respondent to attend the inquiry proceedings. However, the respondent failed to attend the inquiry proceedings on 16.10.1996, 31.10.1996 and 5.11.1996, the same was concluded ex parte on 5.11.1996. Vide letter dated 7.11.1997 the respondent was requested to submit his written brief which he failed to do. Thereafter, vide letter dated 20.1.1997 the copies of the inquiry report dated 2.12.1996 was furnished to him. The inquiry officer found the charges proved and held the respondent guilty of serious mis-conduct by remaining unauthorisedly absent for over two years and misutilising the car loan of Rs. 80,000/- sanctioned in his name. The disciplinary authority accepted the finding of the inquiry officer and by order dated 21.1.1997 imposed a penalty of dismissal from service with immediate effect.

Aggrieved thereby the respondent carried an unsuccessful appeal before the Appellate Authority. The Appellate Authority dismissed the appeal. Aggrieved thereby he filed a writ petition before the learned Single Judge of the High Court of Andhra Pradesh.

4. We noted with dismay that in spite of the facts as adumbrated, the learned Single Judge interfered with the penalty imposed by the disciplinary authority and affirmed by the Appellate Authority by its judgment and order dated 2.5.2003. The operative portion of which reads as under:

Viewed from any angle and applying the ratio decided by the Apex Court in catena of judgments relied on by the learned Counsel for petitioner and referred to above with regard to the proportionality of the punishment vis-a-vis gravity of misconduct proved, I am of the opinion that the dismissal of the petitioner from service is quite disproportionate to the gravity of the charge of misconduct alleged and proved against the petitioner and having regard to the above said circumstances, I hold that the dismissal is unwarranted and the punishment of dismissal is disproportionate to the gravity of the charge, and, at the same time, I prefer to remit the matter back for reconsideration, of the penalty on the charges leveled against the petitioner and imposition of lesser punishment in proportion to the misconduct proved.

As already noticed that the view taken by the learned Single Judge has been affirmed by the Division Bench of the High Court, which in our view is unsustainable in law.

5. It is now well settled principle of law that the gravity of misconduct must necessarily be measured in terms of the nature of the misconduct. A bank officer holding the post of Middle Management Officer-Grade II which is a responsible post absented himself unauthorisedly for about three years which is undoubtedly detrimental to the public interest cannot be said to be not grave misconduct which would warrant dismissal from service. The High Court's view that the punishment of dismissal from service on the proved misconduct is

disproportionate to the gravity of the misconduct, in our view, is fallacious. There can never be a more grave misconduct than a bank officer holding a responsible post absenting himself unauthorisedly for a period of three years detrimental to the public interest. That apart, despite the receipt of several notices issued to him he remained adamant and shy away from participating in the inquiry proceedings. This conduct is also unbecoming or a responsible officer holding the position as Middle Management Officer-Grade II.

6. Learned Counsel for the respondent contended that since the respondent opted for voluntary retirement by a letter dated 19th May, 1994 he would be deemed to have been retired from Bank's service from that date. This submission, in our view, has no substance. Voluntary retirement from the Bank's service is not automatic. It is preceded by an exit interview. Specimen of Exit Interview Form attached to the office memorandum dated 13.12.1993 shows detailed criteria prescribed to be followed in the exit interview before granting request for voluntary retirement. These are amongst others, Educational Qualifications, Date of Promotion to Officer grade, Details of Branches/Offices served (last five postings), Reasons for leaving Bank's service, Date of Interaction/Interview held, Name of the Interviewing Authority, Designation etc. Format of Exit interview is therefore not an empty formalities.

7. For the aforestated reasons, the orders of the learned Single Judge and Division Bench of the High Court are set aside. The writ petition stands dismissed. The appeal is allowed. No costs.