
(1998) 08 AP CK 0062
In the Andhra Pradesh High Court
Case No : W.P.No. 15620 of 1993

K.S.S.N. Sarma

APPELLANT

Vs

State Bank of India and others

RESPONDENT

Date of Decision : 03-08-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 38, 39, 46

Citation : (1998) 4 ALD 722

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : Party in Person, for the Appellant; Ms. Uma for Mr. K. Sreenivasa Murthy, for the Respondent

Judgement

1. The action of the Management of the State Bank of India removing the petitioner from the service as a disciplinary measure is assailed in this writ petition.

2. At the relevant point of time, the petitioner was an officer of the bank and he was posted as Branch Manager at Basanthnagar branch during the year 1986 and he continued to work there upto 6th June, 1987. The petitioner was charge-sheeted on 6-10-1989 for the irregularities reported to have been committed by him in the sanctioning and conduct of advances and also for demanding and accepting illegal gratification from the borrowers while he was working as Branch Manager at Basanthnagar branch. As the statement of defence dated 16-10-1989 submitted by the petitioner was not convincing to the Management, a domestic enquiry against the petitioner was ordered on 13-12-1989. One Sri A.LN.Sarma, Chief Manager and Sri P.V.L.N.Sastry, Deputy Manager were appointed as Inquiring Authority and Presenting Officer respectively. The enquiry was commenced on 24-1-1990 and concluded on 7th July, 1990. The petitioner was defended by one Sri M. Gopalakrishna, the then Deputy General Secretary, Officers' Association, Hyderabad Circle. The defence had submitted their brief. The Inquiring Authority after conducting the enquiry submitted the enquiry

report holding that the petitioner was guilty of all the charges framed against him except Charge No.1(a) and I(c). A copy of the enquiry report was forwarded to the petitioner on 19th June, 1991 to enable him to make his submissions on the findings of the Inquiring Authority. The petitioner submitted his reply to the findings recorded by the Inquiring Authority and the same was received on 29th July, 1991. Ultimately, the General Manager (Operations) who is the Disciplinary Authority under the Regulations after obtaining prior approval from the Chief General Manager and appointing authority in terms of proviso to Rule No.50(3) (iii) of the State Bank of India (Supervising Staff) Service Rules, passed the final order on 2-9-1992 imposing the penalty of "removal from service" on the petitioner as a disciplinary measure. At this juncture itself, it may be noted that the Disciplinary Authority agreed with the Inquiring Authority that Charge No.I(a) was not proved. However, the Disciplinary authority differed with the Inquiring Authority that Charge No.I(c) was not proved against the petitioner. The Disciplinary Authority on appreciation of evidence on record came to the conclusion that Charge No.I(c) is also proved against the petitioner.

3. The petitioner, being aggrieved by the order of the Disciplinary Authority dated 2-9-1992, submitted appeal on 22-9-1992 to the Deputy Managing Director (P) who is the Appellate Authority under the Regulations. The Appellate Authority by its order dated 2-6-1993 dismissed the appeal. The petitioner submitted review petition on 24-4-1995 to the Review Committee-II, State Bank of India and the Review Committee by its order dated 27-6-1997 dismissed the review petition. Hence this writ petition assailing the validity of the disciplinary proceedings initiated by the Management of the Bank and the penalty imposed on the petitioner as a disciplinary measure.

4. The petitioner appeared in person and argued his case himself. The petitioner would assail the validity of the findings recorded by the Inquiring Authority as well as the Disciplinary Authority and would contend that those findings are not based on any acceptable materials or evidence. The petitioner would also contend that the enquiry was conducted in breach of principles of natural justice and fair play-in-action inasmuch as he was not furnished with copies of documents on which reliance was placed by the Management. The petitioner would also further contend that there is non-application of mind on the part of the Disciplinary Authority to the relevant facts and circumstances of the case and the evidence on record. Lastly, the petitioner would contend that at any rate the penalty of removal from service imposed on him is totally disproportionate to the gravity of misconduct alleged against him.

5. On the other hand, Ms. Uma, appearing for the Bank-Management would maintain that in the facts and circumstances of the case and having regard to the evidence produced before the inquiring Authority, the findings recorded by the Inquiring Authority and the Disciplinary Authority are well justified and they are based on acceptable evidence and materials. She would also contend that the charges framed against the petitioner need not be proved beyond reasonable

doubt as claimed by the petitioner, and in a departmental enquiry the findings are required to be recorded on preponderance of probabilities. At this stage itself, I may point out that the petitioner in person argued this case for number of days, and essentially his attempt was to persuade the Court to reappraise the entire evidence on record and record findings on the charges. Perhaps such a course was adopted by the petitioner in the course of argument without knowing the scope of judicial review under Article 226 of the Constitution of India while reviewing the validity of disciplinary proceedings.

6. It is apt to refer to the scope of judicial review of disciplinary proceedings under Article 226 of the Constitution briefly. The Supreme Court in *H. B. Gandhi v. Gopi Nath and Sons* in para 8 observed:

"Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court, Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.

A Division Bench of this Court in the *The Depot Manager, APSRTC Vs. P. Gangarajulu and Another*, held that "the High Court in its certiorari jurisdiction cannot act as an appellate authority and it cannot review or re-weigh the evidence". The High Court can interfere only in a case where the finding of fact is based upon surmises and conjectures. The finding of fact can be upset by the High Court applying only "no evidence" rule and not otherwise. "No evidence" rule can be applied only in a case where a finding of fact is based upon purely and solely on inadmissible evidence like surmises, conjectures and guesses etc. It is quite often reiterated by the Apex Court and the High Courts that the High Courts, while reviewing the disciplinary proceedings, cannot go into the question of adequacy or inadequacy, sufficiency or insufficiency of the evidence on the basis of which the charges are held to have been proved, and if they find that the findings are grounded on some substantial acceptable evidence, the findings cannot be upset. The High Courts in exercise of their powers under Article 226 of the Constitution cannot reappraise the evidence and record a finding on a question of fact different from the one recorded by the Disciplinary Authority even in a case where two views are possible from the same evidence.

7. In this background of the settled principles governing judicial review of disciplinary proceedings, the Court has to see whether the findings recorded by the Inquiring Authority and the Disciplinary Authority on charges are based on acceptable materials and/ or evidence.

8. The statement of allegations enclosed to the charge memo dated 6-10-1989 reads:

"I(a) You had demanded and accepted illegal gratification from various persons as consideration for sanctioning loans to them. A few such instances are detailed in the Annexure I hereto. It is therefore alleged that you had resorted to corrupt practices and tarnished the image of the Bank in the eyes of the public.

(b) In respect of cash credit limit of Rs.10,000/- sanctioned on 17-9-1986 to Shri Badvath Raju, Lambadi Thanda, Kannal Village, it is reported that the borrower had denied having obtained the loan. In this connection is alleged that,

(i) You had promised sanction of Rs.1 lakh in the name of Sri Motilal son of Sri Badavath Raju who was having a driving licence in his name for purchase of a car when both of them approached you in September, 1986 for purchase of an Ambassador car to run it as Taxi and directed them to get quotations and to bring landed property as collateral security and to obtain legal opinion of the advocate for the relative properties. You have referred them to the Bank's Advocate.

(ii) You had demanded Rs. 10,000/- as illegal gratification from them when they visited the branch in that context and obtained their signatures on various papers as if you were obtaining their signatures in connection with the sanction of loan. In respect of the cash credit limit of Rs.10,000/- sanctioned to Shri Badavath Raju, while the borrower or his son denied having paid any amount into the account, there was a credit of Rs. 630.80 on 6-11-1986 and the signature appearing on the credit voucher was alleged to be forged.

(c) You had sanctioned a cash credit limit of Rs. 15,000/- to Sri M.K. Thyagaraju who is a catering contractor of the Mess of M/s. Kesoram Cements Ltd. The proceeds of this loan were used for closing a loan of Rs. 10,000/-sanctioned to him earlier for purchase of a colour TV at your instance, and in this connection you had demanded and accepted an amount of Rs. 1500/- being 10% of the loan amount as illegal gratification.

II.(a) You had sanctioned loans to several borrowers/units which are not in existence and thereby the relative accounts have become irregular due to non-payment. It is therefore alleged that you had deliberately sanctioned loans with a mala fide intention and acted in a way prejudicial to the interests of the Bank and also exposed the Bank to a great risk of financial loss. A few such instances are detailed in Annexure-II hereto.

(b) You had failed to follow up the advance which resulted in the accounts becoming irregular and overdue for repayment. A few such instances are detailed in the Annexure-III hereto".

9. Since both the Inquiring Authority and the Disciplinary Authority have held that charge No.I(a) is not proved, there is no necessity to go into the finding recorded on that charge.

10. Charge I(b) relates to the petitioner promising sanction of Rs. 1,00,000/- in the name of Sri Motilal son of Sri Badvath Raju for the purchase of a car demanding Rs. 10,000/- as illegal gratification. The deposition of Sri Motilal (PW2) and his father Sri Badvath Raju (P.W.3) and complaint letter dated 21-12-1988 (PEXNo.37) signed by both PW2 and PW3 and reply to the legal notice (PEX No.34) satisfactorily prove that there was a demand from the petitioner for a sum of Rs.10,000/- as illegal gratification for sanctioning the Taxi loan to PW2. The petitioner got a set of documents signed by PW2 and PW3 and he got the amount of Rs.10,000/- drawn by PW3 by means of a cheque along with other documents supposed to have been related to taxi loan. The petitioner-raised a CC/SBF loan of Rs. 10,000/- in the name of Sri Badvath Raju by making use of these documents showing Sri Badvath Raju, PW3 as the borrower, Sri Motilal PW2 as guarantor.

11. As regards Charge No.I(c), the petitioner had sanctioned a cash credit hypothecation limit of Rs. 15,000/- on 25-2-1987 to one Sri M.K.Thyagaraju (P.W.5). P.W.5 was the catering contractor of the Mess of Senior guest house of M/s. Kesoram Cements Ltd., as per the loan application (PEX No.4), and the borrower sought the facility of cash credit hypothecation with intention to close the earlier loan of Rs. 10,000/- borrowed by him for purchase of colour T.V. The borrower had committed default in paying the earlier loan and a sum of Rs.10,000/- was outstanding in his loan account. When the matters stood thus, the petitioner again sanctioned loan of Rs. 15,000/-to P.W.5. The P.W.5's earlier version in PEX No.5 and PEX.No. 10, the complaint letters written by P.W-5 to the Bank's Investigating Officer confirms that the initiative was taken in sanctioning Rs. 15,000/- loan in favour of P.W.5 by the petitioner himself. According to the complaint of P.W.5 this loan of Rs.15,000/- was sanctioned to him by the petitioner demanding and accepting illegal gratification of Rs.1500/-. It has come in evidence that P.W-5 is an educated person with the knowledge in English language, and he himself had written the complaint letter PEX 10. Therefore the subsequent denial of P.W.5 for having paid Rs. 1500/- to the petitioner as illegal gratification was disbelieved by the Disciplinary Authority. Apart from that the Disciplinary Authority has referred to the attendant circumstances of the transaction and recorded the finding that Charge No.I(c) is also proved. It cannot be said that the finding recorded by the Disciplinary Authority differing with the finding recorded by the Inquiring Authority on Charge No.I(c) is perverse or based on "no evidence".

12. Adverting to Charges II(a) and (b), suffice it to state that the finding recorded by the Inquiring Authority and the Disciplinary Authority are based on the depositions of P.W1, P.W-4 and P.W-6 and the documentary evidence. The defence of the petitioner that the term "deliberate finance" includes only the improper assessment of credit requirement of the borrowers/units is rejected rightly. As rightly pointed out by the Disciplinary Authority, the term "deliberate finance" should necessarily include deliberate act in financing the borrowers/units ignoring the credibility and the credentials of the borrowers/units. The

documentary and oral evidence led into the enquiry have amply proved that the petitioner had deliberately sanctioned cash credits to the borrowers/units far in excess of their actual credit requirements and thereby he acted in a way prejudicial to the interest of the bank and exposed the bank to financial loss. As rightly observed by the Inquiring Authority, mere obtention of guarantees by the petitioner does not justify grant of higher limits. Charge No.II(b) is also satisfactorily proved inasmuch as the petitioner did not take necessary steps expected of him to recover the loans. The petitioner's contention that bank has not suffered any loss on account of sanction of loans of higher limits is also not substantiated by the petitioner. Be that as it may, even assuming that assertion of the petitioner is correct, that cannot be a ground to upset the finding recorded by the Disciplinary Authority on Charge No.II(b).

13. The Court has carefully gone through the findings recorded by the Inquiring Authority and the Disciplinary Authority and is satisfied that the findings are based on evidence let into the enquiry by the Disciplinary Authority. It cannot be said that the findings are baseless or based on "no evidence". There is also no merit in the contention of the petitioner that there was total lack of application of mind on the part of the Disciplinary Authority in assessing the evidence placed before him. As could be seen from the order of the Disciplinary Authority, the Disciplinary Authority has referred to all the relevant materials and evidence placed before him, the findings recorded by the Inquiring Authority and has given cogent reasons in support of his findings. While differing with the finding recorded by the Inquiring Authority on Charge No.I(c) the Disciplinary Authority has given cogent and acceptable reasons as to why he differs with the finding recorded by the Inquiring Authority. There is also no merit in the contention of the petitioner that the Inquiring Authority violated the principles of natural justice inasmuch as all the copies of the documents demanded by him are not furnished to him. It is a matter of record that the copies of the relevant documents are furnished to the defence representative. As could be seen from the proceedings sheet maintained by the Inquiring Authority, the petitioner was also permitted to inspect the relevant documents. Simply because the copies of all the documents demanded by the petitioner are not furnished to the petitioner delinquent, that fact itself cannot be a ground for this Court to interfere with the disciplinary proceedings. It would not be correct to say that for each and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside. Only in a case where substantial processorial rights are violated resulting in injustice to the delinquent, the Court may intervene and set aside the disciplinary action. The Supreme Court in *State Bank of Patiala and others Vs. S.K. Sharma*, suggested a test. The test is: "All things taken together whether the delinquent officer/employee had or did not have a fair hearing". In the same judgment the Supreme Court observed in para 32 of the judgment thus:

"Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and

irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice- Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter productive exercise. These principles cannot be put in a strait-jacket. Their applicability depends upon the context and the facts and circumstances of each case''''.

14. The Supreme Court dealing with the duties and the responsibilities of the bank employees particularly those of the nationalised banks in para 2 of the judgment delivered in the case Tara Chand Vyas Vs. Chairman and Disciplinary Authority and Others, , was pleased to observe:

"Economic empowerment is a fundamental right of the weaker sections of the people, in particular the Scheduled Castes and Scheduled Tribes, ensured under Article 46 as a part of social and economic justice envisaged in the Preamble of the Constitution; the State is enjoined to promote their welfare effectuated under Article 38. Distribution of material resources to elongate that purpose envisaged in Article 39(b) is the means for the development of the weaker sections. The banking business and services were nationalised to achieve the above objects. The nationalised banks, therefore, are the prime sources and pillars for establishment of socio-economic justice for the weaker sections. The employees and officers working in the banks are not merely the trustees of the Society, but also bear responsibility and owe duty to the Society for effectuation of socio-economic empowerment. Their acts and conducts should be in discharge of that constitutional objective and if they derelict in the performance of their duty, it impinges upon the enforcement of the constitutional philosophy, objective and the goals under the rule of law. Corruption has taken deep roots among the sections of the Society and the employees holding public office or responsibility equally became amenable to corrupt conduct in the discharge of their official duty for illegal gratification. The banking business and service are also vitally affected by catastrophic corruption. Disciplinary measures should, therefore aim to eradicate the corrupt proclivity of conduct on the part of the employees/officers in the public offices including those in banks. It would, therefore, be necessary to consider, from this perspective, the need for disciplinary action to eradicate corruption to properly channelise the use of the public funds, the live wire for effectuation of socio-economic justice in order to achieve the constitutional goals set down in the Preamble and to see that the corrupt conduct of the officers does not degenerate the efficiency of service leading to denationalisation of the banking system. What is more, the nationalisation of the banking service was done in the public interest. Every employee/officer in the bank should strive to see that banking operations or services are rendered in the best interest of the system and the Society so as to effectuate the object of nationalisation. Any conduct that damages, destroys, defeats or tends to defeat the said purposes resultantly defeats or tends to defeat the constitutional objectives which can be meted out with disciplinary action in accordance with rules lest rectitude in public service is lost and service becomes a means and

source of unjust enrichment at the cost of the Society."

15. Generally speaking, any conduct on the part of the employee inconsistent with the faithful discharge of his duties towards his employer would be a misconduct. A duty will be implied in every contract of employment that the employee will serve honestly and faithfully and this duty may be amplified or extended by express terms. One of the basic requirements of what an employer would expect to be satisfied from an employee is loyalty towards him. In modern times, cases of misconduct are enumerated in the Certified Standing Orders or Service Rules or Regulations of the companies or the authorities. *Lopes, L.J. in Pearce v. Foster (1886) 17 Q.B.D. 536* commenting upon the effect of misconduct on the relation of employment said:

"If a servant conducts himself in a way inconsistent with the faithful discharge of his duties in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in the carrying on of the service or the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant".

In the same case Lord Esher, M.R. observed:

"The rule of law is that where a person has entered into the position of servant, if he does anything incompatible with the due or faithful discharge of his duty to his master, the latter has a right to dismiss him. The relation of master and servant implies necessarily that the servant shall be in a position to perform his duty duly and faithfully, and if by his own act he prevents himself from doing so, the master may dismiss him. What circumstances will put a servant into the position of not being able to perform, in a due manner, his duties, or of not being able to perform his duty in a faithful manner, it is impossible to enumerate. Innumerable circumstances have actually occurred which fall within that proposition and innumerable other circumstances which never have yet occurred, will occur, which also will fall within the proposition. But if a servant is guilty of such a crime outside his service as to make it unsafe for a master to keep him in his employ, the servant may be dismissed by his master; and if the servant's conduct is so grossly immoral that all reasonable men would say that he cannot be trusted the master may dismiss him".

16. These observations were cited with approval by the Supreme Court in *Govinda Menon Vs. Union of India (UOI)*, , and by a Division Bench of the Bombay High Court in *Madhosingh Daulatsingh Vs. State of Bombay*, . What is emphasized in these observations is the faithful trustworthy discharge of duties by an employee towards his employer. Particularly the bank employees are obligated to adhere to such Code of Conduct scrupulously inasmuch as every bank employee is a trustee of the public and their monies. The charges alleged and proved against the petitioner are grave in nature, and Charge No.I(b)

touches upon moral turpitude of the petitioner also. Therefore it cannot be said that the penalty of removal from service imposed on the petitioner as a disciplinary measure is disproportionate to the gravity of the misconduct committed by him. The Supreme Court in Union of India (UOI) Vs. Parma Nanda, and the cases to follow that case held that if the penalty can lawfully be imposed and is imposed on the basis of a proved misconduct, the Tribunal or the Court has no power to substitute its own discretion for that of the employer. Adequacy of penalty unless it is mala fide or shockingly disproportionate to the gravity of the misconduct committed by the delinquent is not certainly a matter for the Court to concern with. It may be that this Court under Article 226 in a rare case where the penalty imposed by the Disciplinary authority shocks the conscience of the Court having regard to the nature of the proved misconduct may interfere but not otherwise. In this case the Court is satisfied that the penalty imposed on the petitioner delinquent is proportionate to the gravity of the misconduct alleged and proved against him.

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