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In the Karnataka High Court

Case No : Writ Petition No. 20282 of 1992

M.C. Charati — APPELLANT

Vs

Personnel Manager and Disciplinary Authority, Syndicate Bank and Others — RESPONDENT

Date of Decision : 30-08-2000

Acts Referred:
Constitution of India, 1950 — Article 226, 309, 311 (2)

Citation : (2001) 88 FLR 305 : (2000) ILR (Kar) 4021 : (2001) 1 KarLJ 177 : (2000) 4 KCCR 384 SN

Hon'ble Judges : A.V. Srinivasa Reddy, J

Bench : Single Bench

Advocate : Sri H.K. Vasudeva Reddy, for the Appellant; Sri S.S. Ramdas, for the Respondent

Judgement

1. In this petition filed under Article 226 of the Constitution of India the petitioner challenges the validity and correctness of the impugned order bearing No. 240/PD-IRD/DA-7, dated 21st October, 1991, whereunder the third respondent-Executive Director and the Review Authority of the Bank, rejected the review petition filed by the petitioner against the punishment of compulsory retirement imposed by the disciplinary authority and confirmed by second respondent-Appellate Authority.

2. The facts of the case leading to the writ petition, briefly stated, are as under:

The petitioner was working as Manager at the Regional Inspectorate of the Bank at Belgaum. Letters were addressed to him by the Bank seeking his explanation is respect of the T.A. bill furnished by him and regarding the term deposit held by him and his wife jointly with Maruti Galli Branch of the Bank and the loan availed thereon. The petitioner Submitted his explanation to these letters. The petitioner was served with a charge-sheet on 23rd February, 1988 levelling the following two charges against him:

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(i) That he encashed the social security deposit receipt falsely declaring that the receipt pertaining to the said deposit was missing, knowing or having reason to believe that the said receipt was lying in the custody of Maruti Galli Branch, Belgaum as security for a loan account; and

(ii) That he submitted a T.A. bill dated 8-12-1986 for Rs. 7,512.78 falsely claiming to have performed journey from Jamkhandi to Bijapur and that he reported for inspection duty at Atharga Branch on 10-11-1986 when in fact he never reported for inspection duty at Atharga Branch.

3. The petitioner submitted a statement of defence on 4-4-1988. Not satisfied with the explanation given by the petitioner, the Bank appointed the fourth respondent on 13-8-1988 as the enquiring authority. After the completion of the enquiry, the fourth respondent submitted his report on 24-7-1989 as per Annexure-O, holding that charge No. 1 was partially proved and charge No. 2 was fully proved. Based on the findings of the enquiring authority, the Disciplinary Authority imposed the punishment of compulsory retirement on 10th October, 1990 under both heads of charge. The petitioner preferred appeal on 8-11-1990 as per Annexure-P to the writ petition to the Appellate Authority, respondent 2. The second respondent rejected the appeal and confirmed the order of punishment imposed by the Disciplinary Authority. The review petition preferred to the review authority, respondent 3, having proved futile, the petitioner has come up in this petition for quashing the orders of the enquiring authority, disciplinary authority and the review authority and for a writ in the nature of mandamus directing his reinstatement with back wages.

4. I have heard the learned Senior Counsel H.K. Vasudeva Reddy for the petitioner and Sri S.S. Ramdas for the respondents.

5. The points that arise for my consideration are:

(i) Whether the impugned order Annexure-O passed by the fourth respondent is in accordance with law?

(ii) Whether the order of compulsory retirement passed by the second respondent as per Annexure-Q is just and proportionate to the gravity of the guilt?

(iii) What order?

6. The articles of charge extracted above, refer and relate to drawing of certain sums of money from the Bank by the petitioner, in the first instance by encashment of social security certificate and in the second instance on submission of a T.A. bill. On a detailed enquiry as per Annexure-M, it was concluded by the enquiring authority that charge No. 1 was proved partially and charge No. 2 was proved fully. The findings have been challenged by the petitioner on a host of grounds. A careful examination of the records of the enquiry produced, go to show that the enquiry was fair and proper and the petitioner had ample opportunity to defend himself and the enquiry was not

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vitiated by bias or irregularity in the conduct of the enquiry proceedings. The defence put forth by the petitioner is not one of the total denial. The defence pleaded in respect of charge No. 1 is extracted hereunder:

"Thus, you may appreciate that it was not possible for me to keep track of my FDS/SSDS and LDS against them. I now recall that Maruti Galli, Belgaum Branch had adjusted by three LDS on due dates against the relative FDS/SSDS without even asking me whether I was interested in renewing them. This branch had credited only Rs. 1,000/- to my S.B. Account as proceeds of a LD though the LD was for Rs. 10,000/-. There was a lot of embarrassment to me before this was corrected. In another case the branch had sent my local cheque for collection to the H.O. of the concerned Bank at Delhi. This is the standard of service at Maruti Galli, Belgaum Branch. No wonder that I am again a victim of criminal negligence on the part of the Maruti Galli Branch".

7. His defence in relation to the II charge is also in the same vein. It reads:

"I did perform the journey from Jamkhandi to Bijapur on 8-11-1986, and contacted Shri S. Shivakumar Chanahalli at the counter and asked him to book a room for me. He agreed and kept my luggage with himself. I then left for Belgaum as the following day was a Sunday in keeping with the practice of all inspectors. This is a practice accepted and recognised by the local management. Hence, there was nothing wrong in my going to Belgaum on 8-11-1986. I could not return to Bijapur well in time to commence Atharga Branch inspection on 10-11-1985. I was under the impression that the room was booked on Saturday itself. When I returned to the hotel on 11-11-1986 in the evening, I was surprised to find that Shivakumar had forgotten to book the room as promised. I complained but Shri Kulkarni at the counter said that I need not worry because he would give the rent bill suitably. Accordingly he gave the bill. At that time, printed rent receipt books were exhausted and he gave the bill on hotel''s letterhead. Such bills are given to other inspectors also and are acceptable to the local management. He wrote out the bill on the letterhead and received the amount accordingly. He is an authorised manager of the Lalit Mahal Hotel and has a right to issue receipts/bills. As far as I am concerned, I paid the amount to him as per the bill. How it was accounted for, is not my concern. It is for the hotel proprietor to find out whether the difference has gone. Thus, it is clear that the rent bill is genuine, hundred per cent from any legal point of view".

8. The above defence taken up by the petitioner clearly goes to show that in respect to the first charge, he had agreed that he did not take sufficient care and caution expected of an officer of the Bank before encashing the certificate. As a responsible officer of the Bank, he could not have encashed the certificate unless he was fully satisfied himself that he had in fact not encashed or encumbered the receipt earlier. That he was not able to keep track of all FDS/SSDS receipts and the LDS taken against them is but a lame excuse and the enquiring officer was right in finding that the first charge was partly proved.

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9. Insofar as the II charge is concerned the defence clearly points to his attempt to shift the blame on to the hotel management. What is more, he even goes to the extent of saying, ''please note that I have not certified anywhere in the T.A. bill that all the particulars furnished by me are true and correct. All bills are subject to normal errors, more so in the case of inspectors because they have to submit such bills frequently''. It is the bounden duty of a responsible officer of the Bank to make sure that any bill produced by him staking any claim for reimbursement from the Bank must be true and correct and it is the responsibility of the officer concerned to make sure that no incorrect claim is made on the Bank. Thus, by his own showing, he had presented a bill without making sure whether it was true and correct. Thus, the enquiring authority was right in holding him guilty of the second charge also.

10. There is little or no scope for an officer of the Bank to take shelter under the pretext that the proved misconduct had occasioned on account of an error of judgment, as is sought to be made out by the petitioner in his defence statement. The scope of departmental enquiry is confined to finding out whether or not the delinquent official is guilty of the misconduct alleged against him. What was required of him was to make an earnest effort to check thoroughly the claim he makes, as could be reasonably expected of an honest officer, before he presents the papers to the Bank. The fact that he had not taken the trouble of verifying the correctness or otherwise of the claims he made on the Bank, as admitted by him, before receiving the money would amount to misconduct on his part. The line dividing a claim made on an error of judgment being too thin it is not for this Court in a petition under Article 226 of the Constitution to sit in judgment whether the misconduct could be attributed to an error of judgment or an intention to make undue gain. The fact, therefore, remains that the misconduct alleged against the petitioner is proved. That apart, it is well-settled that, Courts should not sit in appeal over the findings of the inquiring officer in a petition under Article 226 of the Constitution, as this Court does not function as an Appellate Court. Interference is called for only where the findings are totally perverse which is not the case herein.

11. In Bank of India and Another Vs. Degala Suryanarayana, , the Apex Court while examining the scope of judicial review in Departmental Enquiry proceedings, has held:

"The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case mala fides or perversity i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonable and with objectivity could have arrived at that finding. The Court cannot embark upon reappreciating the evidence or weighing the same like an Appellate Authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained".

The findings recorded by the inquiring authority are well-founded and based on

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evidence as could be gathered from the material on record and this Court cannot indulge in reappreciating the evidence. The findings of the inquiring authority are, thus, sustained. Therefore, I answer Point No. (i) in the affirmative.

12. That takes me to the next point which relates to punishment. A lot of emphasis was laid by Mr. Ramdas on this point and he also relied upon a number of decisions to show that Courts should normally refrain from interfering with an order of punishment as it is purely within the domain of the disciplinary authority and not that of the Court. The question to be decided is whether the misconduct proved against the petitioner deserves the punishment meted out to him by the Bank.

13. Learned Senior Counsel Mr. Ramdas relied on a number of decisions to drive home the point that this Court cannot interfere in the matter of punishment as the imposition of proper punishment is within the discretion and judgment of the disciplinary authority.

(i) In B.C. Chaturvedi Vs. Union of India and others, , the Apex Court while dealing with this aspect laid down the law as under:

"Disciplinary authority and on appeals, Appellate Authority are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the High Court/ Tribunal, it would appropriately mould the relief, either directing the disciplinary/ Appellate Authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exception and rare cases, impose appropriate punishment with cogent reasons in support thereof".

(emphasis supplied)

(ii) In U.P. State Road Transport Corpn. and Others Vs. A.K. Parul, , the Apex Court while rejecting the prayer of the appellant for lesser punishment observed:

"This Court consistently has taken the view that while exercising judicial review the Courts shall not normally interfere with the punishment imposed by the authorities as this will be more so when the Court finds the charges were proved".

(iii) In Central Power Research Institute v V.B. Naidu, a Division Bench of this Court while dealing with the question of jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment, observed:

"We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or Competent Authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent

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officer is conferred on the competent officer either by an Act of Legislature or rules made under the proviso to Article 309 of the Constitution. If there had been an enquiry consistent with the rules and in accordance with the principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the Competent Authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the inquiry officer or the Competent Authority is based on evidence".

(emphasis supplied)

(iv) In Shriji Vidyalaya and Another Vs. Patel Anil Kumar Lallubhai and Another, , the Apex Court while rejecting the prayer of the appellant to substitute the punishment imposed with a lesser punishment, observed:

"This Court has consistently held that the Tribunal/Court normally cannot substitute its punishment in the place of punishment given by the disciplinary authority vide Union of India (UOI) Vs. Parma Nanda, , and B.C. Chaturvedi''s case, supra. Applying the said principle, we allow the appeal and set aside the order of the High Court which confirmed the order of the Tribunal".

14. Thus, there can be no two opinions that interfering with the punishment imposed by the authorities after finding the delinquent official guilty in a disciplinary enquiry is, strictly speaking, not within the jurisdiction of the Courts in the normal course. But, then, it should also be borne in mind that there are cases and that it is not possible to lay down any pre-determined principle which is applicable to all cases and in all situations. Mechanical application of any principle to every case would lead to disastrous results and each case has to be examined on its own merits depending on the facts and circumstances of that case. The essence of the matter is for the Court to take into consideration all relevant factors and to balance and weigh them to determine whether the punishment imposed is commensurate with the gravity of the misconduct. Where the punishment imposed is overtly excessive, the principles laid down in the decisions referred to supra, which are applicable in all normal cases, would become inapplicable as, after all, the power to dismiss an official from service or to compulsorily retire him enjoyed by the authorities concerned has to be exercised fairly, justly and reasonably.

15. In Ranjit Thakur Vs. Union of India (UOI) and Others, , the Apex Court while examining the power of the Court to review the quantum of punishment, had this to say:

"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 vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to

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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 decisions 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"

(emphasis supplied)

16. The question to be decided in the present case is whether the punishment imposed is unduly harsh and totally disproportionate to the gravity of the offence that it transcends the legal limits, necessitating and justifying interference by this Court on the aspect of punishment which, in the normal course, is within the exclusive domain of the authority concerned.

(i) The proved misconducts in the case on hand are not of a serious character so as to merit the extreme punishment of compulsory retirement. So far as the first charge is concerned it cannot be disputed that Maruti Galli Branch failed to take note of the lien on SSD lying with the Malvan Branch. Added to this is the fact that the petitioner had repeatedly written to Malvan Branch and also requested the Malvan Branch to instruct Khairatabad Branch to search for the missing SSD receipt. The petitioner himself wrote to Khairatabad Branch to search for the SSD. The Sub-Manager of Khairatabad also had written a letter to the petitioner informing him that there was no LD and that the SSD was not lying as undelivered security with the said branch. Thus, undoubtedly, the petitioner seems to have totally forgotten about the LDS availed by him against the security of SSD receipt. This gives credence to his defence to the effect that the faux pas was committed by him as he could not keep track of all his FDS/SSD and the LDS availed against them. There is every reason, therefore, to believe that this misconduct was the outcome of an error of judgment on his part. It is also to be remembered that his dealing with the Bank insofar as the SSD is concerned is in the capacity of a customer of the Bank and not as an official of the Bank. Whether any chicanery allegedly committed by the petitioner in his capacity as a customer, even if proved, could be made the subject-matter of a departmental enquiry is also an aspect which should have weighed in the mind of the disciplinary authority before imposing the punishment. I have refrained from taking into consideration this aspect of the matter while deciding the first point as it was neither urged as one of the grounds of attack in the writ petition nor argued as such.

17. Be that as it may, from the material available on record it becomes clear that the encashment of the SSD was on account of an error of judgment on the part of the petitioner in believing that he had misplaced or lost the SSD certificate and that he had not availed of any loan on the SSD. The fact also remains that the concerned branches of the Bank also contributed a great deal for this error of judgment on the part of the petitioner. If only the Malwan Branch had noted in the books at its branch that there is a lien on the deposit this whole episode

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could have been avoided. The evidence available on record goes to show that the petitioner acted in his best judgment, though, his best judgment was proved wrong later on.

18. The next misconduct relates to the presentation of an incorrect T.A. bill and receiving the reimbursement thereunder. The defence put forth by the petitioner reveals that he did not display sufficient care and diligence required of him in presenting the aforesaid bill. Though he presented a bill showing that he occupied Room No. 325 from 8-11-1986 from the stance taken by him in his defence in the enquiry, it is clear that he had not, in fact, occupied the room from 8-11-1986. This clearly amounts to contravening Regulation 3(1) of the Regulations. The amount involved is Rs. 7,512.75. The defence taken by him is not plausible and is unworthy of acceptance. The petitioner had in fact stayed in the hotel from 10-11-1986 to 4-12-1986. The false claim only relates to the period from 8-11-1986 to 10-11-1986 i.e., for two days. The misconduct has resulted in some financial loss to the Bank which is however trivial. The proved infraction of duty, however, is not of such a gravity as to call for the punishment of compulsory retirement.

19. In Shankar Dass Vs. Union of India (UOI) and Another, , the Apex Court while dealing with the question of appropriate punishment, observed:

"Clause (a) of the second proviso to Article 311(2) of the Constitution confers on the Government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge". But that power like every other power has to be exercised fairly, justly and reasonably surely, the Constitution does not contemplate that a Government Servant who is convicted for parking his scooter in a no parking area should be dismissed from service.

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But the right to impose a penalty carried with it the duty to act justly. Considering the facts of the case, there can be no two opinions that the penalty of dismissal from service imposed upon the appellant is whimsical".

In the said case the delinquent official had misappropriated a sum of Rs. 500/- and he pleaded guilty to the charge before the Magistrate and was convicted. Based on the conviction by the Court he was dismissed from service. Taking into consideration that the misconduct was committed by him under compelling circumstances, the Apex Court set aside the order of dismissal and reinstated the appellant in service with full back wages from the date of his dismissal till reinstatement.

20. Mr. Ramdas placed heavy reliance on the decision of the Apex Court in B.C. Chaturvedi''s case, supra, wherein the Apex Court held that it is only where the punishment imposed by the disciplinary authority shocks the conscience of the High Court/Tribunal that the punishment imposed can be moulded. It cannot be disputed that a harsh punishment would definitely shock the conscience of the

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Court. Any punishment that is illogical and disproportionate to the misconduct would call for judicial review and the Courts cannot shy away from reviewing such punishment on the ground that the punishment imposed by the disciplinary authority is immune from interference. Immunity of an action by the authority would hold good so long as it is fair and just and the moment it transcends the legal limits it would invite interference by the Court.

21. Lastly, Mr. Ramdas sought to justify the punishment on the ground that it was necessitated on consideration of the past record of the petitioner while Mr. Vasudeva Reddy argued that the Bank was not justified in taking into consideration the past record of the petitioner while deciding the punishment to be imposed, especially so, when the petitioner had no inkling that his past record also was to be considered for imposition of punishment. It is his submission that in such event, the petitioner should have been issued with a notice informing of the intention of the Bank to consider his past record also and he should have been given an opportunity to defend himself against such an approach by the Bank. I fully agree with Mr. Vasudeva Reddy. As held in State of Mysore Vs. K. Manche Gowda, , it would be no answer to suggest that every Government servant must have had knowledge of the fact that his past record would necessarily be taken into consideration by the Government in inflicting punishment on him; nor would it be an adequate answer to say that he knew as a matter of fact that the earlier punishments were imposed on him or that he knew his past record. This contention misses the real point, namely, that ''what the Government servant is entitled to is not the knowledge of certain facts but the fact that those facts will be taken into consideration by the Government in inflicting punishment on him''. Therefore, in the absence of a notice to the petitioner to show cause against the imposition of punishment based on previous bad record also, the disciplinary authority was not justified in taking into consideration the past record also for imposing the punishment.

22. On an overall consideration of the principles laid down by the Apex Court and the Division Bench of this Court and applying the same to the facts and circumstances of the case on hand, I am of the view that the punishment imposed on the petitioner is disproportionate to the proved misconducts. The punishment imposed by the disciplinary authority clearly goes to show that he has construed the misconducts as an endeavor on the part of the petitioner to defraud the Bank, in order to make undue gain and it is this factor that is mainly touted before me by the learned Counsel for the respondents as the pious justification for imposing the said punishment. While it can certainly be said that an error or judgment is not a legally recognised bulwark against a charge of misconduct, it cannot be said so when the matter is examined for the purpose of deciding on the proportionality of punishment and it would be always open to the delinquent to take up that stand in order to plead his case for a mitigating punishment. The defence taken up by the petitioner in the enquiry is one of error of judgment, though the same is not pleaded by him in so many words. The facts and circumstances of the case fortify the stand of the petitioner that he alone

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could not be blamed for the faux pas committed by him. The disciplinary authority should not have overlooked the fact that many factors pleaded by the petitioner could have contributed to the error of judgment on his part which in turn led to the commission of misconducts by him. Where the element of intention to defraud the Bank by an employee cannot be said to have been proved with certainty and where there is reason to believe that the misconduct could have occasioned on account of a misjudgment on the part of the delinquent, it calls for imposition of a punishment which is not deterrent in nature.

23. In the facts and circumstances of the case, it would be just and proper to impose on the petitioner the punishment of reduction to the next lower grade with continuity of service and 25% of back wages. The back wages to be calculated and paid by the Bank to the petitioner can be set off against the amount, if any, received by him consequent to his compulsory retirement. The petitioner would be entitled to the remainder, if any, after set off and the same shall be paid to him in cash within four months from the date of receipt of a certified copy of this order.

24. The writ petition is, accordingly, allowed. The petitioner shall be reinstated in service in the grade immediately lower to the one in which he was placed before his compulsory retirement, with 25% back wages and continuity of service. The petitioner shall be taken to duty immediately on production of a certified copy of this order.

No order as to costs.

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