
(1999) 01 BOM CK 0007
In the Bombay High Court
Case No : Writ Petition No. 62 of 1995

Pendse M.V.

APPELLANT

Vs

Central Bank of India and Others

RESPONDENT

Date of Decision : 14-01-1999

Acts Referred:

Citation : (1999) 1 ALLMR 482 : (1999) 82 FLR 20 : (2000) 1 LLJ 1003

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Advocate : Rustum M. Bhagalia, for the Appellant; K.P. Anil Kumar, for the Respondent

Final Decision : Partly Allowed

Judgement

Chandrashekhara Das, J.—This petition is directed against the order of dismissal from service passed by the Respondent No. 2. Against the order of dismissal Exh. L dated March 30, 1994, the petitioner; had filed an appeal before the Respondent No. 5. The appeal was also dismissed, confirming the order of punishment awarded against the petitioner. It is in these circumstances, that the petitioner filed this writ petition challenging these orders.

2. Before going further, it has to be mentioned here that the petitioner was working as a Chief Internal Auditor and he was due to retire on September 30, 1993. Just before a couple of weeks, before his retirement, a charge-sheet has been communicated to him on September 8, 1993. There are altogether eight charges levelled against the petitioner. For the purpose of this case, I do not think it is necessary to extract all the allegations contained in the charge-sheet. But it is necessary to extract two charges namely charge Nos. 7 and 8.

Charge No. 7

While working as Regional Manager, Pune, Shri M.V. Pendse unauthorisedly sanctioned loans to following two transport operators in contravention of Central Office instructions not to finance/sanction any loans to Transport Operators

during the relevant period.

Name of the A/c Branch Date Amount of Sanction

1. Baburao Mahadeo Sangle Aranyashwar 12.9.85 90,000

2. Shiv Chhatrpati Nagar Vikas Sahakari Sanstha Wadgaon Anand 06.5.86 68,000

Charge No. 8

While working as Regional Manager, Ahmednagar, Shri M.V. Pendse unauthorisedly allowed ad hoc limits/excesses on number of occasions, amounting to about Rs. 6 lacs. In the account National Castings with MIDC, Nagar branch, inspite of the fact that conduct of the account was not satisfactory. He also overlooked the security aspect and thereby failed to protect the bank's interest.

3. The petitioner was exonerated partly from the charge No. 7 and exonerated fully from the charge No. 8. On a close perusal of these charges it can be seen that it contains a general allegation against the petitioner that he used to sanction loans violating the norms issued by the higher authorities and he used to sanction the loans beyond his limits allowed by the authority. Even though the charges are item wised either in number the violation of limit has been incorporated in all these charges. He had sanctioned the loans on different times since February 5, 1970 to June 28, 1986. It may be mentioned that during the proceedings he did not deny these charges. In other words, he did not take up the contention that he had not crossed the limit of his authority. In fact he has more or less conceded. In this background we have to examine the proceedings of the disciplinary authority in this case.

4. The learned counsel for the petitioner Shri Bhagalia submits that the disciplinary enquiry has been conducted following the principles of natural justice and that the disciplinary action is changed with mala fide and that several other officers had committed similar irregularities, have not been proceeded with. Therefore, the entire proceedings is liable to be set aside.

5. I have gone through the evidence and the proceedings of the disciplinary authority. I find that no ground has been made out by the petitioner warranting interference by this Court on the above legal grounds. However, the petitioner's counsel has attempted to impress upon me that the disciplinary proceedings has been rushed in a hasty manner and just within two weeks time the entire proceedings have been started and finalised. These circumstances itself will go to show mala fide nature of the allegation. However, I am not impressed with this argument. Whatever may be the period that has been taken for enquiry is not a ground to interfere in this case by this Court. The question normally asked in the case like this is, whether a fair opportunity has been given to the petitioner in defending his case. In this context the learned counsel for the petitioner also pointed out that sufficient opportunity has not been given to the petitioner even to examine the documents relied on by the disciplinary authority. I find on record

that about one and a half day's time has been given to the petitioner to examine the records and the petitioner's counsel's argument that, that time is not sufficient, cannot be countenanced to. The insufficiency of time is not a ground to interfere with order as violation of principles of natural justice. In another view of the matter, there is not much substance in the contention of the learned counsel for the petitioner in this regard, because, as pointed out earlier, the general allegation as I noticed in all these changes is that the petitioner has crossed the authority in sanctioning the loan. He must be the first person who is aware of his authority, even without any verification of the records. An officer particularly a bank officer will always be conscious of his responsibility and his power without which he cannot discharge his duties properly and legally. Therefore in the nature of allegation contained in the charges, I do not think that the petitioner's contention for insufficiency of time for examining the document is very material and does not vitiate the proceedings. Since this Court is called upon to exercise its writ jurisdiction, normally this court is not justified to go into the facts of the case. Each and every fact has been a matter to be scrutinised by the appellate authority and the appellate authority in this case has done it and I do not think it proper to go into the very details of the facts of the case. It can be said that no violation of principle of natural justice has been committed by the employer in conducting the disciplinary proceedings against the petitioner. Therefore the order passed by the disciplinary authority, which was confirmed by the appellate authority is not liable to be interfered with on this ground. I find no infirmity or refraction of rules in conducting the enquiry.

6. Then the only question that remains in this case is to whether the punishment imposed in this case is justified in the circumstances and nature of the allegations contained in the charge-sheet. As I pointed out earlier, the petitioner's claim that he had an unblemished service record since 1959 and on the eve of his retirement the charges have been unearthed and levelled against him, has not been seriously disputed by the employer. Main charge or charges against him was that he has crossed the limit, the charge Nos. 7 and 8, which are extracted above, which would have been serious in nature, if proved. However, those have not been proved. Therefore what remains is that the petitioner while sanctioning the loan to different persons including his friends and other subordinate officers of the bank has crossed his limits. In view of the nature of the allegations proved, I think that dismissal ordered against the petitioner is a harsh punishment, which is not proportionate to the gravity of the offence we have to take into consideration the normal practice in banks. In order to protect the interest of the customer, Bank Managers have to sanction loan even crossing their limit. In such case Superior Authorities sanction or ratification would be obtained. In this case such sanction has not been obtained by the petitioner. There are no allegations against the petitioner, the amounts have been swindled by sanctioning loan in favour of fictitious person.

7. In this juncture the learned counsel for the respondent Shri Anil Kumar has brought to my notice the limits of this Court in interfering with the quantum of

punishment. He submits that having found that the disciplinary order and dismissal order is not vitiated by any illegality or infirmity, it is not open to this Court to, interfere with the quantum of punishment. I cannot accept this submission as an abstract principle in its sweep. Whether a particular punishment is shockingly disproportionate to the gravity of the offence, is a matter entirely different if the punishment imposed by the appellate authority shocks the conscience of the Court, considering the facts of each case, as held by the Apex Court. The learned counsel, in this context, brought to my notice a decision of the Supreme Court in *Sanchalakshri and Another Vs. Vijayakumar Raghuvirprasad Mehta and Another*, . It is a case where a misconduct which involves a criminal offence and in such circumstances the Supreme Court has held that interference with the punishment is not called for. On appreciation of the allegation in that case the Supreme Court has observed that the offence was very grave and it has been observed in para 7 of that judgment as follows:

"The extenuating facts referred to by the Tribunal for taking a lenient view cannot reasonably lead to the conclusion that the punishment was highly disproportionate. Respondent No. 1 after his absorption in Durga Vidyalaya was getting his salary at Rs. 1480/- in the revised pay scale and thus he was not hurt financially as a result of the delay in forwarding his service book in Durga Vidyalaya. There was no compelling reason for respondent No. 1 to indulge in the acts of forgery as he could have obtained the necessary endorsements by the District Education Officer, the auditor and others in due course of time. No regard for truth and the tendency to commit even a criminal act to get one's work done are clearly reflected by the acts done by respondent No. 1. Durga Vidyalaya handed over the service-book to him for getting it completed instead of sending it directly to the concerned authorities, it cannot be said that thereby it committed any fault. It trusted its teacher. It could not have anticipated that he had a dishonest intention at that time. Thus the second reason given by the Tribunal for interfering with the order of punishment was not justified. Assuming that respondent No. 1 was comparatively young, he had by then put in 8 years" service as a teacher. He was mature enough to realize the nature of his acts. Thus, there was really no justification for the Tribunal to interfere with the discretion exercised by the School Management. In view of the facts and circumstances, there was no justification for the Tribunal to interfere with the punishment imposed by the School Management.

Supreme Court assailed the Tribunal for its interference considering factual matrix and seriousness of the offence.

8. The learned counsel for the respondent next brought to my notice another decision of the Supreme Court in *Shriji Vidyalaya and Another Vs. Patel Anil Kumar Lallubhai and Another*, . The Supreme Court was of the opinion that it is a case where the Tribunal has exceeded the jurisdiction and awarded appropriate punishment. It is also held that the Tribunal has no power to reduce the punishment and to award lesser punishment, and cannot substitute its

punishment in place of punishment awarded by the disciplinary authority. This has no relevance in this case as this Court is not substituting its decision to the penalty to be imposed.

9. Another decision cited by the learned counsel for the respondent is in *Pyare Lal Sharma Vs. Managing Director and Others*, . In that case also the Supreme Court has disapproved the action of the High Court interfering with the punishment imposed by the management, as held in para 20 of the judgment. It is a case where employee has unauthorisedly absented from duty and the rule has prescribed the punishment of dismissal for such a misconduct and it has been held by the Supreme Court that as per the Rule the punishment was lawful. The High Court is not justified in interfering with the punishment imposed by the employer. This decision has no bearing on the facts of the present case. There is no rule prescribing the penalty of dismissal for crossing the financial limits by the delinquent officer while sanctioning the loan.

10. The learned counsel for the respondent has also brought to my notice a copy of the judgment of the Supreme Court in Civil Appeal No. 7188 of 1996, *The Disciplinary Authority-cum-Regional Manager and Ors. v. Nikunja Bihara Patnaik*, where also, in fact the employee was dismissed after taking disciplinary action. The learned counsel has pressed into service this decision to show that almost similar circumstance has arisen in this case. In the aforesaid also a bank officer has sacked for granting loan beyond the sanctioned limit. He also submits that the appeal made by the counsel for the petitioner in this case before the Supreme Court was dismissed having found that the disciplinary proceedings were legally valid, by the Supreme Court. Therefore the learned counsel submits that the similar circumstance arises in this case also and any interference in whatever manner is unwarranted at the hands of this Court. I have gone through the judgment. The delinquent officer in that judgment faced with serious charges than what has been levelled in this case. Moreover the circumstances in this case is that just two weeks before his retirement the charges have been thrown on his face and asked him to face the enquiry. This circumstance is very much relevant for considering the quantum of punishment. In the above cases noted by the counsel for the respondent, the decisions were rendered depending upon the facts and circumstances of each case. In the aforesaid cases quoted above, the Supreme Court has held that in the quantum of punishment this Court cannot be interfered with. That does not mean that in different context and in different circumstances of the facts of the case, this Court cannot interfere with the quantum of punishment at all.

11. As I pointed out earlier the circumstance that before two weeks of his retirement, seven charges have been thrown on to his face and asked him to face the enquiry regarding the transactions pertaining to the year 1976 onwards. The management seems to have rushed with the enquiry and the nature of misconduct is allegedly uniform in all the charges that he has crossed the limit in sanctioning the loan. These circumstances however appear to my mind that the

punishment or dismissal in this case is very grave and disproportionate.

12. In the circumstances I hold that the disciplinary enquiry conducted against the petitioner is not liable to be interfered with by this Court. But however the punishment of dismissal is quite disproportionate and is liable to be set aside and respondents 1 and 2 are directed to impose a lesser punishment than the dismissal against the petitioner and pay all the consequential benefits payable according to law within three months from the date of receipt of this judgment.

13. The writ petition is allowed to the extent as mentioned above. Rule is made absolute accordingly in the above terms.

14. In the circumstances there is no order as to costs.

15. Certified copy is expedited.