

(2016) 12 CAL CK 0058
In the Calcutta High Court

Case No : APO 10 of 2013, GA 3278 of 2012 and WP 2162 of 2000

Sebak Kanti Sengupta

APPELLANT

Vs

United Bank of India

RESPONDENT

Date of Decision : 16-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 CLR 543 : (2017) 1 WBLR 667

Hon'ble Judges : Nishita Mhatre, ACJ. and Tapabrata Chakraborty, J.

Bench : Division Bench

Advocate : Mr. Debasis Sur, Advocate, for the Appellant; Mr. Subir Sanyal and Ms. Sumouli Sarkar, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

Tapabrata Chakraborty J. - The instant writ petition has been preferred challenging an order dated 17th September, 2012 passed by the learned Single Judge in WP 2162 of 2000 by which the writ petition preferred by the appellant challenging the disciplinary proceedings initiated on the basis of a charge sheet dated 10th April, 1997, was dismissed.

2. Shorn of unnecessary details the facts are that when the appellant was working in the post of Chief Officer in the Inspection Department of the United Bank of India (hereinafter referred to as the said bank) a charge sheet consisting of six charges was issued against him on 10th April, 1997. The appellant duly replied to the said charge sheet on 19th April, 1997 and upon conducting an inquiry, the inquiry officer filed his report on 3rd February, 1999. The said inquiry report was forwarded to the appellant along with a letter dated 22nd April, 1999 issued by the disciplinary authority recording his reasons for disagreement with the views expressed by the inquiry officer in respect of the charge Nos. I and V. By the said letter an opportunity was granted to the appellant to file his written submission and the appellant duly submitted the same on 26th April, 1999. The disciplinary authority duly considered the appellant's written submission and

passed the final order of punishment on 6th April, 2000 imposing a punishment of removal from service. Aggrieved by the said order, a statutory appeal was preferred by the appellant but the same was also dismissed and the order of the disciplinary authority was confirmed on 8th May, 2000. Aggrieved by the said order the appellant approached this Court through the instant writ petition and the same upon contested hearing was dismissed by an order dated 17th September, 2012.

3. Mr. Sur, learned advocate appearing for the appellant/writ petitioner argues that the appellant was not granted any opportunity to deal with the disagreement note of the disciplinary authority. Out of the six charges, the inquiry officer found the charge no. I partly proved, the charge Nos. II, III and VI proved and the charge Nos. IV and V not proved. The disciplinary authority disagreed with the findings of the inquiry officer in respect of charge Nos. I and V without granting any opportunity to the appellant to deal with the disagreement note.

4. He further submits that the alleged charges were relating to a period pertaining to the years 1983 to 1991 in respect of which the charge sheet was issued in the year 1997 and as such the charges were stale but such issue was not taken into consideration by the learned Single Judge while passing the order impugned.

5. According to him the order passed by the appellate authority is not sustainable in law inasmuch as the said authority had not even discussed the grounds on the basis of which the statutory appeal was preferred and such infirmity maligns the order passed in the statutory appeal.

6. He further argues that the learned Single Judge has merely recorded the submissions made by the respective parties and has not returned a finding at all with regard to the action of the respondent authorities and that the appellant's claim has been rejected in a cryptic manner.

7. He contends that when there was a disagreement among the inquiry officer and the disciplinary authority pertaining to two charges out of six, the authorities ought not to have imposed upon the appellant a punishment of removal from service. Such order of punishment seriously affects the appellant's right to livelihood and the same is thoroughly disproportionate and shocking.

8. He further submits that for effective adjudication of the dispute the appellant has filed an application being G.A. 3278 of 2012 to bring on record additional documents. The said documents were in the possession of the appellant at the time of preference of the writ petition and the same having not been produced before the learned Single Judge, cannot be brought on record in the appeal. Accordingly the said application is dismissed.

9. Mr. Sanyal, learned advocate appearing for the bank authorities submits that the inquiry officer conducted the proceedings upon supplying all necessary

documents and upon granting due opportunity of hearing to the appellant. In the inquiry report the charge No. 1 was partly proved and the charge Nos. IV and V were not proved but the remaining of charges were established and proved against the appellant. The disciplinary authority could not agree with the findings of the inquiry officer pertaining to charge Nos. I and V and he recorded the reasons towards such disagreement and forwarded the said note along with the inquiry report to the appellant by a letter dated 22nd April, 1999. The appellant duly replied to the same and as such it cannot be contended that the appellant was granted no opportunity to deal with the disagreement note. The allegation of violation of the principles of natural justice is thus not sustainable in law.

10. He further points out challenging the order dated 22nd April, 1999, the appellant preferred a writ petition in which an order was passed on 2nd May, 2000, observing, *inter alia*, that the appellant would be entitled to challenge the order of removal by way of a statutory appeal and in the event any adverse order is passed in the said appeal the same shall not be even effected to without the leave of the Court. The said order dated 2nd May, 2000 was appealed against by the bank and by an order dated 7th June, 2000 the Hon'ble Appeal Court set aside the order of the learned Single Judge passed on 2nd May, 2000.

11. He further submits that it is a well settled proposition of law that the power of the Writ Court to interfere with disciplinary action is limited and that the Writ Court does not, in exercise of its power of judicial review, reappraise the evidence and that the Writ Court ordinarily does not sit in appeal over orders of the disciplinary authority and the appellate authority. According to him, an order of punishment is not interfered with, unless it is shockingly disproportionate to the gravity of the misconduct.

12. The punishment should not be merely disproportionate but should be strikingly disproportionate to warrant interference by the High Court under Article 226 of the Constitution of India and it is only in an extreme case, where on the face of it there is perversity or irrationality, the punishment will be amenable for interference under the limited scope of judicial review.

13. Heard the learned advocates appearing for the respective parties and considered the materials on record. Indisputably, the appellant engaged himself in the trading of New Street Journal as printer and publisher without obtaining prior permission from the bank authorities and the fact that the appellant's wife was the proprietor of the firm M/s. New Street Journal was not reported by the appellant to the bank authorities. The appellant agreed to stand as a guarantor and executed letter of guarantee without obtaining prior permission of the competent authority. The advance given could not be realised as the account had turned NPA, the bank had to file a suit against the borrower and also against the appellant as guarantor, for recovery of the bank's dues. There exists sufficient evidence which links the charged officer with the misconduct alleged against him.

14. Unless it is found that some relevant evidence has not been considered or

that certain inadmissible material has been taken into consideration the finding cannot be said to be perverse. It is well settled that strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. 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 of 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 reasonably and with objectivity could have arrived at that finding. The Court cannot embark upon re-appreciating the evidence or weighing the same like an appellate authority.

15. A perusal of the order impugned in appeal reveals that the learned Single Judge has considered the arguments as advanced by the respective parties. The order passed by the appellate authority is a reasoned one and all the grounds taken by the appellant in the statutory appeal were considered and a detailed order was passed and as such it cannot be contended the said order is cryptic and perverse. The appellate authority has dealt with the grounds of challenge and had affirmed the order of the disciplinary authority giving sufficient reasons which clearly depict a proper application of unbiased mind.

16. Measure, magnitude and degree of misconduct needs to be taken into consideration for weighing the proportion. The appellant's conduct was reproachable and his understanding of responsibility and adherence to discipline was questionable. Regard being had to the facts involved, the nature of post held by the appellant, the conduct expected of him and upon invoking the doctrine of proportionality, we are of the opinion that the instant case is one in which the punishment awarded is commensurate with the proved misconduct.

17. For the reasons discussed above, we are of the opinion that the reliefs as prayed for are not available to the appellant and the appeal is, accordingly, dismissed.

In the facts of the present case, there will be no order as to costs.

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.