

(2008) 10 KAR CK 0071
In the Karnataka High Court
Case No : Writ Appeal No. 776 of 2008

Sri. A. Radhakrishna Nambiar

APPELLANT

Vs

The Syndicate Bank

RESPONDENT

Date of Decision : 01-10-2008

Acts Referred:

Citation : (2009) 121 FLR 827 : (2009) 1 KCCR 548

Hon'ble Judges : P.D. Dinakaran, C.J.;Mohan Shantanagoudar, J

Bench : Division Bench

Advocate : H.S. Srinivasa Murthy, for the Appellant;

Final Decision : Dismissed

Judgement

P.D. Dinakaran, C.J.—This is an appeal preferred by the unsuccessful petitioner aggrieved by the dismissal of his writ petition filed for the relief of writ of mandamus to direct the respondent to reinstate him in his original post with full back wages, continuity of service, seniority, promotion and all other consequential benefits.

2. The brief facts of the case giving rise to the present appeal are that:

The petitioner-appellant herein joined the services of the bank on 14.05.1974 in the Kadatoka branch of the bank in Uttara Kannada district and in the year 2000, after promotion he was working as an officer in the middle management grade scale-II. On 01.12.2000 he was issued with a charge sheet wherein he was alleged to have committed irregularities on two occasions viz., on 29.02.2000 and 26.05.2000. Both these charges related to fraudulent transfer of amounts from one of the customers of the bank namely M/S. Essen Exports. The charge relating to 29.02.2000 was with reference to the transfer of an amount of Rs. 20,000/- to another account and the charge in respect of 26.05.2000 related to transfer of an amount of Rs. 4,09,480/- to another account An enquiry was conducted and the petitioner defended his case and after completion of the enquiry, the Inquiring Authority having found that the charges were proved

against the petitioner the matter was referred to the Disciplinary who imposed the punishment of dismissal from service. Challenging the same, the petitioner moved the writ petition before the learned Single Judge without any success. Therefore, he is before us in this appeal.

3. We have heard the learned Counsel on both sides and perused the material on record.

4. Learned Counsel for the appellant submitted that that the enquiry conducted was neither fair nor procedurally right; that the request made by the appellant to retire from service voluntarily has been rejected without proper consideration; the review petition filed by the appellant before the reviewing authority has not been determined by passing any order and that the findings recorded by the enquiring authority were biased.

5. The learned standing counsel for the respondent bank supported the order passed by the learned Single Judge contending that the misconduct committed by the appellant is very serious in that he had fraudulently transferred huge sums of money from the account of one of the customer of the bank to the account of his close relatives.

6. According to learned Counsel for the appellant the charges were vague and incapable of being understood but the said contention is urged on behalf of the appellant only for the first time before the learned Single Judge. The Apex Court in *Om Prakash Mann Vs. Director of Education (BASIC) and Others*, held that ground of vagueness should be urged at the first instance and it is not open for the delinquent to urge it after the completion of the inquiry. Therefore we do not find any merit in the said contention.

7. With regard to the other point raised before us that the punishment of dismissal is disproportionate, we find it difficult to entertain such a contention as the charges levelled against the petitioner is very grave in nature as they relate to fraudulent transfer of amount from one customer to another. It is settled law that that the court should not interfere with the administrator's decision imposing punishment unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision. To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed vide *Union of India (UOI) and Another Vs. K.G. Soni*, . Since in the instant case, the appellant is proved to have committed grave irregularity of transferring the funds from the account of one of the customers to his relative's account, we do not find any reason to interfere with the punishment of dismissal on the ground that the same

is disproportionate. The learned Single Judge has passed a well-reasoned order and we do not find any good reason to interfere with such well reasoned order.

8. Consequently, the writ appeal is liable to be dismissed and is, accordingly, dismissed.