
(2025) 04 OHC CK 1415
In the Orissa High Court
Case No : Writ Petition (C) No. 11189 Of 2011

Sunil Kumar Rout

APPELLANT

Vs

Urban Co Operative Bank Ltd., Rourkela And Others Vs

RESPONDENT

Date of Decision : 08-04-2025

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2025) 04 OHC CK 1415

Hon'ble Judges : G. Satapathy, J

Bench : Single Bench

Advocate : T.K. Mishra, R.N. Mishra

Final Decision : Partly Allowed

Judgement

G. Satapathy, J

1. The Petitioner by way of this Writ Petition seeks to challenge the judgment dated 28.12.2010 passed in Service dispute 6 of 2009g under Annexure-7 by which the member Co-Operative Tribunal, Odisha, Bhubaneswar has allowed the service dispute in part by setting aside the penalty to make good for the loss suffered by the Bank to the tune of Rs.14,92,930/, while confirming it for reversion of the petitioner to the post of Junior Assistant.

2. The factual matrix as delineated is that on 04.03.1991, the Writ Petitioner was initially appointed as Junior Assistant in Urban Co-operative Bank and he was promoted to the post of Senior Assistant in April, 1995 and subsequently promoted to Assistant Manager in December, 1995. After his promotion to Assistant Manager, the Petitioner worked as Branch Manager in different Branches, however, a Departmental Proceeding(DP) bearing D.P. No.1275 dated 06.10.2007 was initiated against him with 11 charges, to which the Petitioner submitted his show-cause, but an Inquiry Officer was appointed paving the way for conducting a Domestic inquiry in which two charges were proved against the Petitioner. Accordingly, the Petitioner submitted his show-cause to the enquiry

report, but the disciplinary authority without considering his explanation proceeded to impose final punishment in the DP by reverting him to the rank of Junior Assistant from the grade of Assistant Manager and to make a good for the losses caused by him to the assets of the Bank with interest and cost, failing which his service was directed to be terminated. Accordingly, the loss was assessed at Rs.14,92,930/.

2.1. Being aggrieved, the Petitioner submitted an application to review the order of penalty, but the authority issued a notice to the Petitioner to pay the loss caused to the Bank. Finding no way out, the Petitioner approached the Tribunal against the impugned order passed in the DP, but the Tribunal by the impugned judgment only set aside the penalty for payment of loss caused to the Bank by the Petitioner while confirming his reversion to the post of Junior Assistant. Against such finding of the Tribunal, the Petitioner has approached this Court in this Writ Petition.

3. In the course of hearing Mr. Tushar Kumar Mishra, learned counsel for the Petitioner submits that when the Tribunal has come to a finding that the Petitioner is not liable to pay for the loss caused to the Bank, then as to how he can be found guilty of the charges of negligence and misconduct, but the learned Tribunal ignoring the principle of law has confirmed the penalty of reversion of the Petitioner in the DP which needs to be interfered in this Writ Petition. Accordingly, Mr. Mishra has prayed to allow the writ petition.

3.1. On the other hand, Mr. R.N. Mishra, learned counsel for the OP Nos. 1 and 2 however, has submitted that since the Departmental Proceeding has been conducted properly and no prejudice has been caused to the Petitioner and the finding of the reversion of the Petitioner being upheld by the Tribunal, it could not be proper to interfere with the findings of the Tribunal, but in case the findings of the Tribunal is considered to be perverse, then the proper recourse is to remit the matter back to the Tribunal for fresh adjudication. Accordingly Mr. Mishra, has prayed to pass appropriate order in the matter. Mr. Mishra has also produced the file of Departmental Proceeding at the time of argument.

4. After having carefully bestowed an anxious considerations to the rival submissions, since the Petitioner challenges the concurrent findings of facts and penalty as recorded in the Disciplinary Proceeding and service dispute case, this Court by reiterating the settled position of law on "scope of judicial review" against the orders passed in Disciplinary Proceeding and confirmed by the Tribunal makes it ample clear that Courts should not interfere in the matter by re-appreciating the evidence taken in Disciplinary Proceeding and substitute its own view merely because some other view is possible. Further, the Court shall not disturb the findings of the Disciplinary Authority, unless there is serious miscarriage of justice or such finding has been recorded without any evidence or on the basis of no evidence or the punishment imposed is shockingly disproportionate. What is the scope and ambit of judicial review against the order of Disciplinary authority has been well settled by the Apex Court in paragraph-12

&13 of the decision in Union of India and others Vs. P. Gunasekaran; (2015) 2 SCC 610, wherein it has been held thus:-

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based.
- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience."

The aforesaid principle was not only followed, but also has been reiterated by

the Apex Court in paragraph-21 in Union of India and others Vs. Dalbir Singh; (2021) 11 SCC 321.

5. Looking at the prayer on the anvil of the principles as settled and noted above, the Petitioner in this case has faced the Departmental Proceeding with 11 charges, but two charges are proved against the petitioner, who was accordingly found guilty of two charges and the Enquiring Officer conclude the following in his report:

(i) He(petitioner) is negligent in discharging his duties and responsibilities as a Branch Manager;

(ii) He(petitioner) has disobeyed the official orders causing deficiency to the assets of the Bank.

Examining the aforesaid findings of Enquiring Officer which was not only concurred by the Disciplinary Authority, but also was confirmed by the Tribunal, on the backdrop of settled legal principles, this Court on perusal of materials on record does not find anything to conclude that the aforesaid finding was without any evidence or no evidence. In the enquiry report, the findings were arrived at on due discussion of evidence, but the Petitioner has set forth grounds in the writ petition to re-appreciate the evidence by extensively quoting the evidence adduced by the Department, however, scope of judicial review to re-appreciate the evidence adduced in Disciplinary Proceeding is very limited in the writ jurisdiction and that is the reason why the learned Tribunal did not interfere with the findings of the Disciplinary Authority while interfering with the penalty of recovery against the petitioner. It is more than clear that this Court in exercise of extraordinary writ jurisdiction cannot overturn the findings of the Disciplinary Authority by re-appreciating the evidence on record merely because another view is possible and in this case, the Court having not come to conclude that the findings of the Disciplinary Authority being without or no evidence, it cannot interfere with the findings of the Disciplinary Authority. Hence, the challenge of the petitioner with regard to findings of the Disciplinary Authority and confirmed by the Tribunal merits no consideration.

6. Adverting to examine the penalty on pedestal of the principle as to whether it is "shockingly disproportionate", it appears that the petitioner is not only found negligent, but also found guilty of disobedience, but imposing penalty commensurate to the delinquency is within the domain of the Disciplinary Authority, however, when it is shockingly disproportionate, the Court can definitely interfere with it. In the service dispute case, the learned Tribunal has set aside the penalty of recovery, which was not challenged by the Department, however, the penalty of reversion has been termed by the petitioner to be "shockingly disproportionate". True it is that the petitioner has been reverted to the original grade, which is two grade below than the grade in which was posted at the time of initiation of Departmental Proceeding and normally in case of reversion, the delinquent employee is down-graded to one grade below which is

of course not a universal rule, however, taking into consideration the penalty as imposed on the petitioner reverting him to the post of Junior Assistant, which is base level post, to which originally he had joined. The delinquency of the petitioner as noted by the Enquiring Officer makes it clear that he was negligent and disobedience of official order, but still then the charge against the petitioner is on the basis of allowing over drawal to some accounts which is stated to be on account of negligence and not in consonance with the orders and circulars of the bank, however, nothing was brought on record to suggest that the petitioner had committed the act of negligence or disobedience of orders with malafide intention and, therefore, the penalty of reversion of the petitioner to his original post which is two grade below the post which the petitioner was holding at the time of initiation of Departmental Proceeding.

7. True it is that no rule or circular has been brought to the knowledge of the Court to indicate that the authority was in fact debarred to impose such a harsh punishment to the petitioner, but at the same time, the authority concerned could have imposed the penalty to revert the petitioner to one grade below which is in fact a major penalty, but not so harsh than the penalty of reversion to two grade. It is trite that Courts while exercising their power of judicial review over the findings of the Disciplinary Authority, do not sit as the Appellate Authority. Decision qua the nature and quantum of the penalty is the prerogative of the Disciplinary Authority and it is not the function of the Court to decide the same. It is only in exceptional circumstance, where it is found that the penalty awarded by the Disciplinary Authority is shockingly disproportionate to the misconduct, the Courts may steps in and interferes. No doubt the award of penalty which is grossly in excess to the misconduct cannot claim immunity and remains open for the interference under the limited scope for judicial review which is based on the "Doctrine of Proportionality". It is also equally true that the Court cannot impose penalty or substitute penalty in those cases where the penalty is found to be violative on the pedestal of "Doctrine of Proportionality" and in such cases, the only option left to the Court to remit the matter back to the Disciplinary Authority for reconsideration of the penalty. In this case, looking at the gravity of misconduct vis-a-vis the imputation of charges, this Court is of the considered view that the penalty of reversion of the petitioner to the post of Junior Assistant is excessive and disproportionate and thereby, the matter be remitted back to the authority concerned for reconsideration of the penalty of the petitioner. It is, however, open to the authority to impose appropriate penalty on the petitioner in accordance with rule.

8. In the result, the writ petition is allowed in part on contest, but in the circumstance there is no order as to cost. Consequently, the penalty of reversion of the petitioner to the post of Junior Assistant is hereby quashed and matter is remitted back to the authority for reconsideration to award appropriate penalty in accordance with rule..

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