
(2001) 02 DEL CK 0011
In the Delhi High Court
Case No : L. P. A. No. 295 of 1999

Syndicate Bank

APPELLANT

Vs

Bakhtawar Singh

RESPONDENT

Date of Decision : 02-02-2001

Acts Referred:

Citation : (2001) 3 AD 341 : (2001) 90 DLT 668 : (2001) 58 DRJ 128 : (2001) 90 FLR 50 : (2001) 2 LLJ 143

Hon'ble Judges : Mahmood Ali Khan, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : Mr. C.L. Narsimahan, for the Appellant; Mr. G.K. Aggarwal, for the Respondent

Judgement

Dalveer Bhandari, J.—The Syndicate Bank has preferred this appeal against the judgment of the learned single Judge dated 13.5.1999 passed in C.W.P. No. 2786 of 1993.

Brief facts which are necessary to dispose of this appeal are recapitulated as under :

2. Respondent No. 1, a bank employee was charge-sheeted and removed from the service of the appellant Bank on 6.11.1992. The Delhi Cantonment Branch received a letter during November, 1996 from Major Manjit Singh stating inter alias that the proceeds of the loan arranged in his name at the branch were utilised by the CSE. He further doubted the genuineness of some of the entries effected in his Saving Bank pass book. On 6.12.1986, the CSE deposited on his own an amount of Rs.2,155/= at the branch for credit to Saving Bank Account No. 9581. The CSE vide his letter dated 14.10.1989 addressed to the Manager of the Delhi Cantonment branch stated that he made a credit entry of Rs.500/= in Saving Bank Account No. 9581 which pertains to a transfer entry of 10.5.1986 and on 10.7.1986 he made another credit entry for Rs.500/= in Saving Bank Account which pertains to a clearing entry. Again, it was alleged against the respondent that he made the proceeds of the loan arranged in the name of Major

Manjit Singh for his own benefit. It is also mentioned that he made four fictitious/ false credit entries for sums aggregating to Rs.2155/- into his Saving Bank Account No. 9581 during the period between 10.5.1986 to 01.09.1986. Therefore, he was chargesheeted by the Bank for doing acts prejudicial to the interest of the Bank.

2.A The Disciplinary Authority after considering the entire material on record observed that the CSE was given ample opportunity to defend his case in the departmental inquiry. The Disciplinary Authority held that the Inquiry Officer has rightly based his decision on the evidence produced before him. Thereafter, a punishment of dismissal from the services of the Bank was proposed to the respondent employee. The CSE also appeared and was given a personal hearing on the proposed punishment. After hearing his defense representative, the Disciplinary Authority observed that the misconduct committed by the respondent is of a very serious nature and the punishment proposed is proportionate to the gravity of the misconduct committed by the CSE. The Disciplinary Authority passed the formal order dismissing the respondent from the service of the bank with immediate effect.

3. The respondent filed an appeal. The Appellate Authority by order dated 5.4.1993 concurred with the view taken by the Disciplinary Authority. The Appellate Authority observed that the respondent herein had clearly admitted the charges and the guilt in the beginning of the Inquiry. The respondent made good the deficiency by depositing the amount of Rs.2,155/= on 6.12.1996 towards the credit of Saving Bank Account No. 9581 of Major Manjit Singh which indicates that the four entries made by him were fictitious.

4. Looking to the gravity of the matter, the Appellate Authority concurred with the decision of the Disciplinary Authority and confirmed the punishment of the dismissal. The learned Single Judge has summarized main contentions of the respondent which are briefly enumerated as under :

(a) There was sufficient balance in petitioner"s (Respondent herein) own Saving Bank Account to meet his commitment to Major Manjit Singh.

(b) Petitioner"s "admission" was relied upon in part whereas it ought to have been accepted or rejected in whole. There was no evidence against him.

(c) In absence of cross-examination, his testimony ought to have been treated as uncontroverted and accepted, if it met the test of preponderance of probabilities.

(d) The Inquiry Authority gave the finding that there was no fraudulent intent on part of the petitioner.

(e) The credit vouchers were also signed by the supervisory staff.

5. It was submitted by the respondent before the learned Single Judge that he has now realised the mistake committed by him and does not challenge the

findings of the Inquiry Officer which were approved by the Disciplinary Authority. These findings were also confirmed by the Appellate Authority. The learned counsel submitted that the past service and conduct have to be taken into consideration in that perspective. The learned counsel for the respondent submitted before the learned Single Judge that to express the sense of remorse, the respondent is prepared to even undergo a probation for two years. He only wants an opportunity to prove his bona fides.

6. It was also submitted on behalf of the respondent before the learned Single Judge that while considering the question of proportionality, of punishment the Disciplinary Authority and the Appellate Authority are bound to take into account the entirety of the facts and circumstances of the case. The learned Single Judge, while disposing of the writ petition has observed that "the Disciplinary Authority and the Appellate Authority ought to have approached the matter with compassion and any person who has committed an offence of this nature and who has realised his mistake and seeks an opportunity to reform himself should have been given an opportunity and it is only in that context the Disciplinary Authority and Appellate Authority should have approached the question of imposition of punishment".

7. The learned counsel appearing for the respondent submitted that the respondent would not claim any back wages and he (respondent) may be treated even as a fresh entrant and could be kept on probation for a period of two years. The appellate Authority was directed by the learned Single Judge to consider the proportionality of the punishment imposed. The Bank is aggrieved by the order of the learned Single Judge and has approached this Court in Appeal. The important question of law involved in this case pertains to the scope of judicial review of the administrative order regarding proportionality of punishment in disciplinary proceedings.

8. The Syndicate Bank has placed reliance on the judgment of the Supreme Court, i.e., Union of India and another Vs. G. Ganayutham (Dead) by LRs., . In this judgment, the Wednesbury Test has been explained by the Supreme Court.

9. In appeal it was submitted that to judge and evaluate the validity of any administrative order or statutory discretion, normally the Wednesbury Test should be applied to find out whether the decision was illegal or suffered from the procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the frame work of law, have arrived at.

10. It is also observed that the Court while applying Wednesbury principle should consider whether the relevant considerations had been taken into account and/or whether irrelevant considerations had been ignored. The Court must examine whether the action was bona fide or not. The Court would also consider whether the decision was totally arbitrary, whimsical, absurd or perverse. It is also observed that the Court should not go into the correctness of the choice made by the administrator amongst the various alternatives open to him. The Court

should not substitute its decision to that of the administrator. This principle of *Wednesbury* has been enunciated in the celebrated case *Associated Provincial Picture Houses Ltd. Vs Wednesbury Corporation* reported in [(1948) 1 KB 223 & in (1947) 2 All ER 680]. The Court observed that :

"In considering whether an authority having so unlimited a power has acted unreasonably, the court is only entitled to investigate the action of the authority with a view to seeing if it has taken into account any matters that ought not to be or disregarded matters that ought to be taken into account. The court cannot interfere as an appellate authority to override a decision of such an authority, but only as a judicial authority concerned to see whether it has contravened the law by acting in excess of its power".

11. Reliance has also been placed on the English decision - *Council of Civil Service Unions and Others Vs Minister for the Civil Service* 1984 (3) All ER 935. It is stated that the Court would not interfere with the administrator's decision unless it was illegal or suffered from the procedural impropriety or was irrational - in the sense that it was in outrageous defiance of logic or moral standards.

12. The learned counsel for the appellant, Mr. Narsimahan has invited our attention to the case of *Ranjit Thakur Vs. Union of India (UOI) and Others*, . In this case the Supreme Court interfered with the punishment only after coming to the definite conclusion that the punishment was in outrageous defiance of logic and was shocking. It was also described as perverse and irrational. In other words, the *Wednesbury* and *CCSU* tests were satisfied, whereas, in the instant case according to the appellant neither *Wednesbury* nor *CCSU* tests were applied. Mr. Narsimahan also placed reliance on *B.C. Chaturvedi Vs. Union of India and others*, . In this case the Supreme Court had observed that the High Court, 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, it would appropriately mould the relief, either by directing the disciplinary authority/appellate authority to reconsider the penalty imposed.

13. Reliance has also been placed on *Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora*, . In this case the Supreme Court has held that the Court would not interfere unless the punishment is wholly disproportionate.

14. The learned counsel for the appellant also placed reliance on another judgment of the Supreme Court - *Tulsiram Patel Vs Union of India* (1985) SCC (L&S) 672 their Lordships of the Supreme Court held that only when the Court finds that the order is arbitrary and grossly excessive compared to the gravity of alleged misconduct, only, then will the Court strike down the impugned order.

15. In the case of *Union Bank of India Vs. Vishwa Mohan*, . the Supreme Court observed that in banking business, absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee. The Court observed

that if this is not observed, the confidence of the public/depositors would be impaired.

16. The learned counsel for the appellant submitted that the administration of justice cannot be allowed to be trembled by a feel of mercy particularly in the context of administrative law, where interference by court is relegated to a secondary role. When faith is lost in an employee, particularly in Banking business where public money is involved, mercy has no role to play and reformative approach is totally uncalled for.

17. It is also submitted that the learned Single Judge was not justified in observing the facts and circumstances of this case that the administrative authorities should have approached the matter with compassion and particularly when the respondent had realised his mistake and sought an opportunity to reform himself. It was submitted by the learned counsel for the appellant that the approach adopted by the learned Single Judge is neither valid nor legal.

18. The learned counsel for the appellant also submitted that if a judicial review of administrative orders in disciplinary proceedings is accepted, it would be a very easy walk for those, who were outright found guilty of gross misconduct, to get away with inadequate and disproportionate punishment by exhibiting compassion and a kind of sense of remorse.

19. We have carefully considered the entire material on record particularly the Inquiry Report, the decision of Disciplinary Authority and the order of the Appellate Authority. In the facts and circumstances of this case, in our considered opinion it cannot be said that the decision arrived at by the Disciplinary Authority and confirmed by the Appellate Authority was wholly disproportionate, absurd, arbitrary or whimsical.

20. It may be pertinent to mention that the learned Single Judge has not disturbed the findings of the Disciplinary Authority and confirmed by the Appellate Authority but directed the concerned Authority but directed the concerned Authority to consider the question of imposition of punishment. Therefore, the directions as given by the learned Single Judge to reconsider the question of imposition of punishment was not justified, in the facts and circumstances of the case.

21. In banking business, absolute devotion, diligence, integrity and honesty have to be preserved by every bank employee otherwise confidence of the public and the depositors would be shaken. The scope of the judicial review of the administrative order is extremely limited. The Courts are justified in disturbing the administrative order only when the punishment awarded was an outrageous defiance of logic and was shocking and it is perverse and irrational. This case cannot be brought into the category of those cases where the punishment imposed by the Disciplinary Authority or and confirmed by the Appellate Authority can shock the conscience of the Court. As a matter of fact in the facts and circumstances, no other punishment would have been adequate, where the

respondent totally failed to maintain absolute integrity and honesty in discharge of his duties as a bank employee.

22. In view of the settled principles of law as crystallised by the various aforementioned decisions of the Apex Court, with great respect to the learned Single Judge, the impugned judgment cannot be sustained.

23. Consequently, the appeal is allowed but in the facts and circumstances, the parties are directed to bear their own costs.