

(2017) 04 AHC CK 0119
In the Allahabad High Court
Case No : 214 of 2017

VISHNU DUTT SHARMA

APPELLANT

Vs

GENERAL MANAGER AND OTHERS

RESPONDENT

Date of Decision : 10-04-2017

Acts Referred:

Constitution of India, Article 226 -
Allahabad High Court Rules, 1952, — Rule 5

Citation : (2017) 04 AHC CK 0119

Hon'ble Judges : V K Shukla, M C Tripathi

Bench : Division Bench

Advocate : Yogendra Nath Rai, Anadi Krishna Narayana

Final Decision : Dismissed

Judgement

1. For the reasons stated in the affidavit filed in support of delay condonation application, as the same constitutes sufficient cause for condoning the delay in filing of present special appeal, the delay condonation application is allowed.
2. Special Appeal is treated to have been filed well within time. Ref: Special Appeal Heard Shri Yogendra Nath Rai, counsel for the appellant, Shri Ashok Trivedi, counsel for the respondents.
3. Present Special Appeal has been preferred under Chapter VIII Rule 5 of High Court Rules 1952 assailing the validity of order dated 11.04.2016 in Writ A No.16028 of 2016 (Vishnu Dutt Sharma vs. General Manager, Bank of Baroda (W.U.P.U.) and three others) whereas learned Single Judge has refused to interfere in the decision taken by Disciplinary Authority, which has been confirmed by the Appellate Authority so as to warrant any interference in the matter.
4. Brief background of the case is that petitioner-appellant has proceeded to file Writ A No.16028 of 2016 (Vishnu Dutt Sharma vs. General Manager, Bank of Baroda (W.U.P.U.) and three others) assailing the validity of order dated

30.06.2014 passed by third respondent i.e. Dy. General Manager, Bank of Baroda, Regional Office, Agra as well as order dated 31.12.2015 passed by Dy. General Manager (W.U.P.U.) Bank of Baroda, Zonal Office D, Civil Lines, Bareilly U.P. Petitioner has been working as Universal Teller-Cashier, Hathras Branch, District Hathras. The Departmental proceedings had commenced against him regarding certain charges of alleged misconduct. A chargesheet has also been served upon the petitioner on 23.08.2013 whereby seven charges has been levelled against him. The first charge that has been levelled against petitioner-appellant relates to 35 withdrawals of a sum of Rs.2,44,900/, which were paid in cash by petitioner and the said amount has also been credited in the account of petitioner-appellant. This much is also reflected that no cash was deposited and no details of cash has been mentioned on the back of withdrawals. Second charge that has been levelled against the petitioner-appellant pertains to certain transactions, which were created in evening, after the close of working hours, after 5:00 pm and as late payments and late receipts were not allowed by any officer nor were mentioned on the cash balance book. Similarly other charges were also levelled against the petitioner-appellant and in response to the chargesheet so submitted, petitioner-appellant had disputed all the allegations and charges and the same were denied by him. In the present matter, a full-fledged inquiry was got conducted by the Bank and the Inquiry Officer, in his turn, has found that charges levelled against him are made out. Finally on the basis of report so submitted by Inquiry Officer, the Disciplinary Officer had proceeded to impose punishment of compulsive retirement upon the petitioner-appellant. Thereafter on being aggrieved with the punishment order, petitioner-appellant had preferred an appeal, which was also turned down by the Appellate Authority and as such both the orders were subjected to challenge before this Court in the aforementioned Writ Petition.

5. The entire claim that has been set up before the Learned Single Judge is to the extent that bare perusal of the chargesheet as well as reply submitted by the petitioner-appellant by no stretch of imagination it could be presumed that at any point of time the petitioner-appellant was involved in any financial loss to the bank concerned and he has acted strictly as per the norms and guidelines of the bank.

6. Once the petitioner-appellant had not deviated from any norms and not involved in any embezzlement and no financial loss has ever been caused to the bank, then the punishment of compulsive retirement ought not to have been passed under the present facts and circumstances of the case.

7. The Learned Single Judge, in his wisdom considered the case in hand on merit and vide order dated 11.04.2016 proceeded to dismiss the said writ petition providing therein that once the decision making process has not been shown to have suffered from any infirmity, and materials did exist to return a finding of guilt against the petitioner, then this Court is not to act as an appellate authority, so as to examine the merits of the charges levelled and proved, in exercise of

jurisdiction of Article 226 of the Constitution of India.

8. Shri Yogendra Nath Rai, Counsel for the appellant precisely submits that the Disciplinary Authority as well as the Appellate Authority had failed to consider the charges no.1 to 5, which do not amount of misconduct and on such allegations no such punishment could be inflicted and on this score the Learned Single Judge has also utterly failed to appreciate the findings on record and contrarily on the basis of inquiry report, the Learned Single Judge has proceeded to reject the claim set up by the petitioner-appellant in most cursory manner and as such, this Court should come to the rescue and reprieve of the petitionerappellant.

9. Per contra Shri Ashok Trivedi, Counsel for the respondents has vehemently opposed the present appeal on the ground that in the present matter, the full-fledged inquiry was got conducted and ample opportunity was accorded to the petitioner-appellant and on the basis of evidence punishment was proposed and the same was duly accorded by the Disciplinary Authority and the same was also approved by the Appellate Authority and once such is the finding of fact and even before the Learned Single Judge, the petitioner-appellant could not demonstrate any error in the decision making process and once the categorical material were brought on record and the same was proved before the Inquiry Officer and admittedly petitioner-appellant had violated the established banking norms and instructions and he was involved in manoeuvring the transactions and has been found guilty in the inquiry and no infirmity in the same could be indicated by him, then at this stage, no reprieve can be accorded to the petitioner and no indulgence is required in the matter.

10. We have the occasion to examine the record in question and what we find that Inquiry Officer has clearly proceeded to hold that Charge Nos.1, 3, 5 and 7 have been proved in its entirety whereas Charge Nos. 2, 4 and 6 have been found to be partially proved. As per the record this much is clearly reflected that petitioner-appellant had not taken due care of the banking norms and instructions and the same has been violated with impunity. In catena of decisions, the Apex Court as well as this Court have clearly proceeded to observe that in the banking sector all the employees are to adhere the strict norms and guidelines and at no point of time there is any deviation from the established norms can be permitted to be taken Here the law on the subject is also clear that scope and jurisdiction of Court in the matters of challenge to the findings recorded by the enquiry officer and the disciplinary authority is very limited.

11. In State of Orissa vs. Bidyabhushan Mohapatra AIR 1963 SC 779, the Supreme Court considered whether the High Court can interfere with the order of punishment simply because finding recorded by the Enquiry Officer in respect of some charges is found to be vitiated by an error of law and whether it can go into the sufficiency and adequacy of punishment. While reversing the order of Orissa High Court, which had allowed the writ petition filed by the respondent, the Supreme Court observed:- "But the Court in a case in which an order of dismissal of a public servant is impugned is not concerned to decide whether the

sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an inquiry consistent with the prescribed rules, are not justiciable:

nor is the penalty open to review by the Court. If the High Court is satisfied that if some but not all of the findings of the Tribunal were "unassailable", the order of the Governor on whose powers by the rules no restrictions in determining the appropriate punishment are placed, was final, and the High Court had no jurisdiction to direct the Governor to review the penalty for as we have already observed the order of dismissal passed by a Competent Authority on a public servant, if the conditions of the constitutional protection have been complied with, is not justiciable. Therefore if the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the Inquiry Officer or the Tribunal *prima facie* make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice."

12. In *State of A.P. v. Sree Rama Rao* AIR 1963 SC 1723, the Supreme Court indirectly reiterated the proposition laid down in *Bidyabhushan Mohapatra*'s case (*supra*) and held:- "The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental inquiry against a public servant; it is concerned to determine whether the inquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the inquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of inquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the inquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a

proceeding ... under Article of the Constitution."

13. In *Railway Board v. Niranjan Singh* AIR 1969 SC 966, the principle laid down in *Bidyabhushan Mohapatra's* case (supra), was reiterated. In *State of Madras vs. G. Sundaram* AIR 1965 SC 1103, the Constitution Bench of the Supreme Court laid down the following proposition:- "High Court, in the exercise of its jurisdiction under Article 226 of the Constitution, cannot sit in appeal over the findings of fact recorded by a competent Tribunal in a properly conducted departmental enquiry except when it be shown that the impugned findings were not supported by any evidence. It cannot consider adequacy of that evidence to sustain the charge."

14. In *State of A.P. Vs. C. Venkata Rao* (1975) 2 SCC 557, a three Judges Bench of the Supreme Court referred to the judgments of *Syed Yakoob Vs. Radhakrishnan*, AIR 1964 SC 477, *Bidyabhushan Mohapatra's* case (supra), *Niranjan Singh's* case (supra) and observed:- "In considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court need not be applied. Even if that rule is not applied by a domestic tribunal in any inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a Court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal."

15. In *B.C. Chaturvedi vs. Union of India* (1995) 6 SCC 749, the Supreme Court, while considering the appellant's challenge to the order of punishment passed as a sequel to the departmental enquiry held against him, highlighted the limited scope of judicial review by making the following observations:- "Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is

necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappraise the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case." In *Tara Chand Byas vs. Chairman JT* 1997 (3) SC 500 a bank employee was punished for giving loans without adequate security. The Supreme Court upheld the punishment. In *Apparel Export Promotion Council vs. A.K. Chopra* AIR 1999 SC 625, the Supreme Court again considered the High Court's power to interfere with the disciplinary proceedings and held:- "It is a settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappraise the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it

should not normally substitute its own opinion and impose some other punishment or penalty. Further, it is a well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the Court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the Court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the Court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority."

16. In *Regional Manager and Disciplinary Authority SBI Hyderabad vs. S. Mohad. Gaffar* AIR 2002 (SC) 3037 the Supreme Court interpreted the words "gross misconduct" as against the "minor misconduct" under the "Shashtriya Award" and "Desai Award" applicable to the employees of the bank and held that the expression "gross misconduct" is not to be viewed or considered as it may appear or appeal to the perception of the court. It has to be construed in the context of the definition. If any act is done prejudicial to the interest of the bank or gross negligence involves, or is likely to involve the bank in serious loss and where the employee of the bank knowingly makes a false statement in any document pertaining to or in connection with the employment with the bank, the findings on such issue would amount to gross misconduct. The penalty or punishment imposed by the disciplinary authority or appellate authority will not be treated to be excessive, shocking conscious of the court, if it is permissible. The High Court does not normally interfere or substitute its own opinion and impose some other punishment or penalty than the punishment imposed by the bank. Similar view was also taken in *Union of India and ors vs. K.G. Singh* (2006) 3 ESC 373 (SC) limiting judicial review to the deficiency in the decision making process and not the decision itself. In *State Bank of India vs. T.J. Pal* (1999) 4 SCC 759 the Supreme Court observed that proof of actual loss was not necessary for punishing a bank employee. In *Union of India vs. Vishwa Mohan* 1998 (4) SCC 310 it was held by the apex court that absolute devotion, diligence and integrity is required from the employees in the banking business, otherwise the confidence of the public will be impaired.

17. This Court has consistently held in *D.S. Bisnoi vs. State Bank of India* 2004 (1) ESC 381; *Sudhir Singh vs. District Cooperative Bank* 2003 (1) ESC 465; *Ram Pratap Sonekar vs. Allahabad Bank* 2000 (2) ESC 814; *K.K. Singh vs. Gomti*

Gramin Bank 2002 (1) ESC 257, delivered by Division Benches, relying upon Disciplinary Authority vs. N.B. Patnaik 1996 (4) SCC 457; State Bank of India vs. T.J. Pant 1999 (4) SCC 759, that the High Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, cannot sit in appeal over the findings recorded by the disciplinary authority of the bank based upon the enquiry report. Where full opportunity is given to the employee of the bank to defend himself, the High Court would not interfere in the findings on technical and flimsy grounds. In Disciplinary Authority vs. N.B. Patnaik (supra) the Supreme Court observed that even if no loss has been caused to the bank, an act beyond the authority of the officer of the bank amounts to misconduct.

18. In Dr. Ram Pal Singh vs. State of UP and ors (2006) 2 ESC 1182 Allahabad (DB) a Division Bench of this Court held that the jurisdiction of court in the matters of challenge to the findings recorded by the enquiry officer and the disciplinary authority is very limited. The Court cannot sit in appeal over such findings. It only reviews the manner in which the decision was taken. The jurisdiction of the High Court under Article 226 of the Constitution of India in such matters is confined to correct errors of law or procedural matters and violations of principles of natural justice resulting in miscarriage of justice. The judicial review is permissible against the decision making process and not against the decision itself. A similar view was taken by Division Bench in Sarvesh Kumar Sharma vs. Nuclear Power Corporation of India Ltd and another 2006 (2) ESC 1153.

19. Apex Court in the case of Union of India and ors vs. P. Gunasekran, 2015 (2) SCC 610 has taken the view that High Court in exercise of its powers under Articles 226 and 227 cannot venture into reappraisal of evidence or interfere with conclusions of enquiry proceedings conducted in accordance with law, or go into reliability/adequacy of evidence, or interfere if there is some legal evidence on which finding is based. In disciplinary proceeding High Court is not and cannot act as second court of first appeal.

20. In the present matter the entire record clearly speaks that as per his own wisdom the petitioner-appellant has proceeded to make certain transactions that were contrary to the banking norms and instructions. Once such is the factual situation and the decision making process has not been shown to have suffered from any infirmity before this Court, then we are of the considered opinion that the Learned Single Judge has rightly refused to exercise the jurisdiction under Article 226 of the Constitution of India as jurisdiction of the High Court under Article 226 of Constitution of India in such matters is confined to correct the error of law or procedural matters and the violation of principle of natural justice resulting in miscarriage of justice and the judicial review is permissible against the decision making process and not against the decision itself, in view of this, no interference is required to be made in the order impugned.

21. Special Appeal sans merit and the same is accordingly dismissed.