AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 4252 of 1997

Reserved on : 28/06/2019

Delivered on : 04/07/2019

Smt. Fulmati Choudhary W/o Late Shri S.L. Choudhary Aged About 59 Years R/o Near Ayyappa Mandir Bilaspur, P.S. Civil Lines Bilaspur, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. Central Bank Of India Through Its Managing Director, Central Office, Nariman Point, Mumbai, Maharashtra, State., District : Mumbai, Maharashtra
2. The Zonal Manager-Cum-Appellate Authority Central Bank Of India, Zonal Office, Bombay Market 1st Floor, G.E. Road, Raipur, M.P.
3. The Regional Manager-Cum-Disciplinary Authority, Central Bank of India, Regional Office, P.B. No. 13, Choubey Colony, Raipur, M.P.

---- Respondents

For Petitioner	:	Ms. Deepali Pandey, Advocate
For Respondent/s	:	Mr. B. D. Guru, Advocate

Hon'ble Shri Justice P. Sam Koshy

CAV Order

1. The petitioner in the present writ petition has challenged the orders passed by respondent No. 3 the Regional Manager cum Disciplinary authority Annexure P-5 whereby the services of the petitioner stood terminated. The order also under challenge is the order passed by the Departmental appellate authority respondent

No. 2 whereby the appeal preferred by the petitioner stood rejected vide Annexure P-7 dated 29.03.1995.

2. The brief facts of the case relevant for adjudication of the present dispute is that the original petitioner Shri S. L. Choudhary was working as a Branch Manager at the Branch office of the respondent at Balrampur Branch. While working there as a Branch Manager the officer was served with a charge sheet on 30.09.1992 in respect of certain lapses committed by him during his tenure as a Branch Manager. One Shri N. K. Thawait, Deputy Chief Officer, Regional Office Shahdol was appointed as an enquiring authority to conduct the enquiry proceedings. The departmental enquiry was conducted and an enquiry report was submitted on 25.09.1993. Copy of the enquiry report along with show cause notice was served upon the delinquent on 01.12.1993. The delinquent immediately thereafter submitted his detailed submission to the disciplinary authority. The disciplinary authority thereafter vide order dated 06.07.1994 issued the order of termination from service. The petitioner immediately thereafter preferred an appeal before respondent No. 2 who in turn vide order Annexure P-7 dated 29.03.1995 affirming the order of termination dismissed the appeal. It is these two orders passed by the disciplinary authority and appellate authority which is under challenge in this petition. During the pendency of the present writ petition the original petitioner Shri S. L. Choudhary had expired and since then the present petitioner has got herself substituted in the petition and is pursuing the matter.

3. The contention of the petitioner assailing the two orders is that the disciplinary authority has not properly appreciated the evidence which has been led by the petitioner. The, findings of the enquiry officer is a perverse finding. At the same time, it is also contended

by the petitioner that the disciplinary authority also have wrongly appreciated the evidence led by the management, in as much as it failed to appreciate the fact that a few of the witnesses have not supported the case of the prosecution and as such the charge levelled against the petitioner has not been conclusive proof and in the absence of a conclusive evidence the finding of the disciplinary authority is not sustainable and deserves to be set aside/quashed. It was further the contention of the petitioner that the order of the appellate authority Annexure P-7 dated 29.03.1995 is a non speaking order and same is therefore liable to be set aside. That the appellate authority has also not given sufficient reasons while deciding the appeal and in the absence of proper reasoning, the order of appellate authority is liable to be quashed. That disciplinary authority also is not properly appreciated the defence statement that petitioner had submitted in response to the explanation/show cause issued by the management served upon the officer along with a copy of enquiry report.

4. Per contra, opposing the petition Shri B. D. Guru, counsel for respondent referred to the enquiry proceedings and submitted that it is a case where the respondent Bank had conducted a thorough enquiry so far as the allegations/ charges that were levelled against the petitioner. That based on the documentary evidence which has been brought on record the enquiry officer had submitted his report. That the disciplinary authority had also thoroughly scrutinized the evidence that have been adduced by either side and only after careful consideration of the submissions submitted on either side a decision was taken. Thus, the finding arrived at by the disciplinary authority and which has also been affirmed by the appellate authority does not warrant interference.

It was further the contention of the repondent that infact there is no perversity in the findings arrived at nor is there any dearth of evidence from the documentary proof that has been produced by the management and thus the findings infact is a finding of fact with sufficient proof on record.

5. In view of the same there is hardly any scope for interfering with the order of punishment or the order of the appellate authority. So far as the contention of the petitioner of the appellate authority's order being non speaking order, it was contented by the counsel for the management that perusal of the record shows that the order of the appellate authority would clearly reflect that he has after due consideration decided the appeal.

6. Having heard the contentions put forth on either side and if we look at the ground that have been raised by the petitioner to assail the two orders, it would clearly reflect that the grounds raised by the petitioner are neither technical nor are they attributing violation of principles of natural justice nor have they alleged any technical flaw in the conducting of the departmental enquiry. That all the grounds that have been raised like not properly appreciating the evidence that has been led by the delinquent and also not appreciating the fact that couple of management witnesses has not supported the case of the management not proving the charges which are all matters which require reappreciation of evidence. The ground of the petitioner of disciplinary authority and appellate authority not properly appreciating the written submission which the delinquent had submitted after the enquiry report was furnished along with show cause notice is again a ground which requires thread bear appreciation of the evidence and submissions that has been brought on record during the enquiry proceedings.

7. At this juncture, it would be relevant to refer to the legal position at it stands so far as the scope of interference in a departmental enquiry is concerned. It is by now well settled proposition of law with the scope of judicial review in matters pertaining to disciplinary proceedings is limited to the extent of finding being erroneous and is manifestly arbitrary or the finding is such which is not based on facts and materials produced before the enquiry officer.

8. Supreme Court in this regard in the case of S. R. Tewari Vs. Union of India, (2013) 6 SCC 602 in paragraph 19, 20 & 21 have held as under :-

> **"19.** In the case of CIT v. Mahindra & Mahindra Ltd., AIR 1984 SC 1182, this Court held that various parameters of the court's power of judicial review of administrative or executive action on which the court can interfere had been well settled and it would be redundant to recapitulate the whole catena of decisions. The Court further held:
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> > "11. ....It is a settled position that if the action or decision is perverse or is such that no reasonable body of persons, properly informed, could come to, or has been arrived at by the authority misdirecting itself by adopting a wrong approach, or has been influenced by irrelevant or extraneous matters the court would be justified in interfering with the same."
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> "**20.**The court can exercise the power of judicial review if there is a manifest error in the exercise of power or the exercise of power is manifestly arbitrary or if the power is exercised on the basis of facts which do not exist and which are patently erroneous. Such exercise of power would stand vitiated. The court may be justified in exercising the power of judicial review if the impugned order suffers from mala fide, dishonest or corrupt practices, for the reason, that the order had been passed by the authority beyond the limits conferred upon the authority by the legislature. Thus, the court has to be satisfied that the order had been passed by the authority only on the grounds of illegality, irrationality and procedural impropriety before it interferes. The court does not have the expertise to correct the administrative decision. Therefore, the court itself may be fallible and interfering with the order of the authority may impose heavy administrative burden on the State or may lead to unbudgeted expenditure. (Vide: Tata Cellular v. Union of India, AIR 1996 SC 11; People's Union for Civil Liberties & Anr. v. Union of India & Ors., AIR 2004 SC 456;

and State of N.C.T. of Delhi & Anr. v. Sanjeev alias Bittoo, AIR 2005 SC 2080)."

"21. In Air India Ltd. v. Cochin International Airport Ltd., AIR (2000) SC 801, this Court explaining the scope of judicial review held that the court must act with great caution and should exercise such power only in furtherance to public interest and not merely on the making out of a legal point. The court must always keep the larger public interest in mind in order to decide whether its intervention is called for or not.**"**

9. A similar view has also been taken by the Supreme Court in the case of **Sanjay Kumar Singh Vs. Union of India & Ors., AIR 2012 SC 1783** and also in the case of **Union of India & Others Vs. Bodupalli Gopalaswami, (2011) 13 SCC 553,** wherein the Supreme Court has in a very categorical terms held that in departmental enquiry proceedings the scope of Court's are very limited. It has been reiterated by the Supreme Court that in a disciplinary proceeding matters the Court cannot substitute its own finding and thus by replacing the finding arrived at by the authority that too after detailed appreciation of the evidence brought on record. It has been repeatedly held by the Supreme Court under Article 226 of Constitution , the High Court does not sit as an appellate authority over the findings of the disciplinary authority as also the appellate authority. It has also been repeatedly held by the Supreme Court that the High Court under Article 226 would not reappreciate the entire evidence and come to a different and independent finding.

10. A similar view also has been taken by the Supreme Court in the case of **Union of India & Others Vs. P. Gunasekaran, (2015) 2 SCC 610,** For ready reference paragraph 12 & 13 of the said judgment reproduced hereinunder :-

"12. 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 Article 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). re-appreciate 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."

11. Once when the law is settled that in disciplinary proceedings unless there is a ground of perversity or the finding being contrary to the evidence on record or there being technical flaw in the conducting of the departmental enquiry, the Court should be slow in interfering with such findings which are based on evidence which has come on record.

12. Coming to the facts of the present case, it would reveal that presenting officer appointed by the management had produced before the enquiry officer the entire documents pertaining to the alleged transactions which have been made by the delinquent when he was a Branch Manager at Balrampur Branch of the respondent Bank. Perusal of the enquiry proceedings would also reveal that the delinquent employee also was granted full opportunity to inspect and verify the records. Thus, the findings arrived at by the enquiry officer is purely based on the documents and documentary proof produced during the course of enquiry. Thus, it is a finding of fact. What is also necessary at this juncture to take note of is that in a departmental enquiry the standard of proof required to prove the charges is that of preponderance of probability. Unlike in a criminal case, where charges has to be proved beyond all reasonable doubts. The findings of the enquiry officer can be on the subjective satisfaction of the authority based on the evidence and materials brought before the enquiry officer.

13. So far as the ground of appellate authority's order being a non speaking order, if we peruse the order of the appellate authority, it would reveal that the appellate authority infact has considered and dealt with all the grounds that the delinquent has raised in his departmental appeal. Therefore, it is difficult for this Court to hold that the finding of the appellate authority is without any reason or is a non speaking order.

14. The Hon'ble Supreme Court dealing with the same issue in the case of **“State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya” reported in 2011 (4) SCC 584** in paragraph No.7 held as under:

> **“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the**

domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (vide B. C. Chaturvedi -Versus- Union of India – 1995 (6) SCC 749, Union of India vs. G. Gunayuthan – 1997 (7) SCC 463, and Bank of India -Versus- Degala Suryanarayana – 1999 (5) SCC 762, High Court of Judicature at Bombay vs. Shahsi Kant S Patil– 2001 (1) SCC 416).”

15. For all the aforesaid reasons and legal position as it stands, this Court does not find any strong case made out by the petitioner calling for an interference to the disciplinary authority's order and to the appellate authority's order also. The writ petition thus fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Rohit