SUPREME COURT OF INDIA

Naresh Chandra Bhardwaj

Vs.

Bank of India

C.A.No.4037 of 2019

(Sanjay Kishan Kaul and Indira Banerjee,JJ.,)

22.04.2019

JUDGMENT

Sanjay Kishan Kaul,J.,

SLP(C) No.16555 of 2018

1. Leave granted.

2. The appellant was employed with respondent No.l/Bank of India (for short 'Bank') as Scale II Officer when he sanctioned three loans while posted at the Lal Bangla Branch of the Bank at Kanpur. The appellant was also the recommending authority for two loans at Harsh Nagar Branch, once again, at Kanpur. These loans were ultimately classified as Non-Performing Assets ('NPAs') and the process of granting these loans was scrutinised by the Bank when various procedural abnormalities were found, which were likely to cause a loss to the Bank of Rs.70.32 lakh.

3. In pursuance of the disciplinary proceedings initiated the appellant was visited with the major penalty of removal from service which shall not be disqualification for future employment upon the appellant. The endeavour of the appellant to assail the proceedings visiting him with these adverse consequences have throughout been unsuccessful including vide impugned order dated 25.10.2017.

4. On 4.7.2018 the only aspect which persuaded this Court to issue notice was with respect to the quantum of penalty. This was on the basis of the submission advanced by learned counsel for the appellant that there were two other cases of officers, one Mr. R.K. Mishra and other Mr. V.K. Srivastava where also similar losses had been caused on account of the same party and they had been visited with the punishment of compulsory retirement. In effect the appellant sought that on parity he should be also visited only with the punishment of compulsory retirement.

5. On the respondents entering appearance, learned counsel for the respondent sought to obtain instructions whether the punishment could be so altered to compulsory retirement

on parity with the other two delinquent employees. A counter affidavit has been filed in this behalf which opposes the request made on behalf of the appellant. That is the limited contour of controversy we have to examine in the present case.

6. It is trite to say that the domain of the courts on the issue of quantum of punishment is very limited. It is the disciplinary authority or the appellate authority, which decides the nature of punishment keeping in mind the seriousness of the misconduct committed. This would not imply that if the punishment is so disproportionate that it shocks the conscience of the court the courts are denuded of the authority to interfere with the same. Normally even in such cases it may be appropriate to remit the matter back for consideration by the disciplinary/appellate authority. However, one other cause for interference can be where the plea raised is of parity in punishment but then the pre-requisite would be that the parity has to be in the nature of charges made and held against the delinquent employee and the conduct of the employee post the incident. It is the latter aspect which is sought to be advanced by learned counsel for the appellant by relying upon the judgment in Rajendra Yadav v. State of Madhya Pradesh & Ors. On this very aspect learned counsel for the respondents drew out attention to a subsequent judgment in Lucknow Kshetriya Gramin Bank (Now Allahabad, Uttar Pradesh Gramin Bank) & Anr. v. Rajendra Singh which had taken note of the earlier judgment referred to aforesaid.

7. There is really no difference in the proposition, which is sought to be propounded except that in the latter judgment the principles have been succinctly summarised in the last paragraph of the judgment, which read as under:

> "19. The principles discussed above can be summed up and summarized as follows:
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> 19.1. When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.
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> 19.2. The Courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.
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> 19.3. Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of
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> 19.4. Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The Court by itself cannot mandate as to what should be the penalty in such a case.

> 19.5. The only exception to the principle stated in para (d) above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct was identical or the co-delinquent was foisted with more serious charges. This would be on the Doctrine of Equality when it is found that the concerned employee and the co¬delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge sheet in the two cases. If co-delinquent accepts the charges, indicating remorse with unqualified apology lesser punishment to him would be justifiable."
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> (emphasis supplied)

8. The principle, thus, culled out is that remitting a matter on the issue of quantum of punishment would be as set out in para 19.5 aforesaid, i.e., where a co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This is based on the principle of equality but then there has to be an absolute parity.

9. We now proceed to analyse the facts of the present case in the contours of the aforesaid principles.

10. If we look to the case of the other two officers, the likely loss to the Bank was assessed in the range of about Rs.77.70 lakh in the case of Mr. R.K. Mishra and Rs.39.74 lakh in the case of Mr. V.K. Srivastava. The amount is, at least, not very different from one as in the case of Mr. R.K. Mishra. However, what is more important is the role performed. Mr. R.K. Mishra and Mr. V.K. Srivastava were both the sanctioning authorities in respect of the loans in questions and there were four loans each involved in the case of both the officers. In the case of the appellant, he was the sanctioning authority in three loans while he was the recommending authority in two loans.

11. In order to appreciate this aspect, we would first refer to the findings on the charges against the appellant. It is noteworthy that no mala fide was proved. It was found that one Mr. Vikram Dixit alias Mr. Vinny Sondhi was the key person who is a cheat and has defrauded many organisations by proving his identity through different identity cards acquired by him fraudulently. Third important aspect is that the approved advocates and valuers submitted a report which was relied upon by the Bank officials. These actually appear to be a common thread in all the three cases.

12. Now turning to the recommendations of the Chief Vigilance Officer dated 20.8.2009, it would be relevant to reproduce para 6.2, which reads as under:

> "6.2 The DA has recommended imposition of the major penalty of "Compulsory Retirement" on all the three Officers. On perusal of the records, we find that S/Shri V.K. Srivastava and R.K. Mishra are P.F. optees and Shri N.C. Bhardwaj is a pension optee. Earlier, we had proposed "Removal from Service" in respect of all the three Officer, looking to the fact that in case compulsory retirement is imposed

> on Shri Bhardwaj, he would be entitled for compulsory retirement person. Looking to the seriousness of the acts of misconduct committed by Shri Bhardwaj, we feel that "Removal from Service" should be the appropriate penalty in his case. It is so because apart from his involvement as recommending authority in 2 cases at Harsh Nagar Branch, he had sanctioned 3 more loans from Lal Bangla Branch to accommodate the same party i.e., Shri Vikram Dixit."

13. A reading of the aforesaid shows that while earlier the proposal was for removal from service for all the three officers, in respect of other two officers it was converted into compulsory retirement while not doing so in the case of the appellant. The rationale is stated to be the seriousness of the acts of misconduct of the appellant and the fact that he was the recommending authority in two cases and the sanctioning authority in three other cases. However, the real reason comes out from the earlier part of the paragraph, which is that while the other two officers were provident fund optees, the appellant was a pension optee. It is, however, not explained in any of the pleadings before us as to what is the financial ramification in respect of the two options and as to whether the appellant would get a greater financial benefit by reason of being a pension optee.

14. It is difficult for us to accept that there is any difference in the conduct of the three officers as would justify this differentiation in punishment. The most important fact in this behalf to notice is that as per the counter affidavit submitted by the respondents, in their own wisdom they have agreed to grant compassionate allowance to the appellant, which is 2/3rd of the full pension as would be payable to him had the punishment of removal from service not been imposed on him. What is also important to note is that it is further submitted in the same paragraph 8.2 that even if the punishment is modified to compulsory retirement the appellant would receive 2/3rd of the full pension which is equivalent to the 2/3rd of the full pension as received for compassionate allowance. The appellant has been given the maximum benefit under Regulations 31 & 33 of the Pension Regulations 1995 dealing with compassionate allowance.

> "8.2 It is further submitted that even in case a punishment of "Removal from service" is imposed upon the Petitioner is modified to that of "Compulsory Retirement", he would receive 2/3rd of the Full Pension, which is equivalent to the 2/3rd of Full Pension which he is receiving at present as a "Compassionate Allowance.""

15. We fail to appreciate that once there is no financial difference and the role is practically identical, why the respondents hesitated themselves to convert the punishment inflicted on the appellant from one of "removal from service which shall not be disqualification for future employment" to "compulsory retirement." The only aspect is the nature of punishment which appears to tar the appellant more than the other two officers without any financial implication for the respondent-Bank.

16. In the aforesaid facts & circumstances, we are, thus, inclined to accept the plea of the appellant to convert his punishment in terms aforesaid to one of "compulsory retirement."

17. The appeal is accordingly allowed leaving the parties to bear their own costs.