

CASE NO.:
Appeal (civil) 2672 of 2003

PETITIONER:
Y.P. Sarabhai

RESPONDENT:
Union Bank of India & Anr.

DATE OF JUDGMENT: 22/05/2006

BENCH:
Dr. AR. Lakshmanan & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T

Dr. AR. Lakshmanan, J.

We have heard Mr. V. Sudeer, learned Counsel for the appellant and Mr. L. Nagéswar Rao, learned Senior Counsel assisted by Mr. O.P. Gaggar, Advocate for the respondents.

The appellant was appointed as a security officer of the respondent Bank in 1980 and was working in middle Management Cadre (Grade-III) as Manager. Security in 1998 when he was dismissed from the services of the respondent Bank for alleged violation of Regulation 13 of the Union Bank of India Officer Employee (Conduct) Regulations, 1976. In the charge sheet, it was alleged that he was not reporting for his duties since 3.6.1997. It was further stated that the appellant's services were transferred to Chennai but the appellant did not carry out his transfer orders to Chennai and was remaining absent without sanction of leave. Regulation 13(1) requires that "no officer/employee should absent himself in case of sickness or accident without submitting a proper medical certificate". The Bank's Staff Circular dated 2.6.1981 also provides that "the Management is not bound by the certificate produced by the employee and may require him to appear before the Medical Practitioner of Bank's choice for medical examination."

The Inquiring Authority came to the conclusion that though the appellant was remaining absent on grounds of illness, the real reason was that he was reluctant to carry out his transfer to Chennai.

The Disciplinary Authority awarded the punishment of dismissal from the services of the Bank concurring with the above observation of the Inquiring Authority. The Disciplinary Authority further held the appellant guilty of the following misconducts:

- a) Contravention of Regulation 13 of the Union Bank of India Officer Employees" (Conduct) Regulations, 1976
- b) Failure to discharge his duties with devotion and diligence
- c) Acting in a manner unbecoming of a Bank officer.

The Appellate Authority in dismissing the appellant's appeal held:

- a) that it is the conduct of the petitioner "taking undue advantage of his normal sickness to avoid transfer to the extent possible", which was "not genuine".
- b) that "his sickness" was not such where he could "not attend his normal office duties".

The High Court held that the appellant was adamant in not carrying out the transfer order and tried his best to avoid transfer until he finally failed upto this Court in challenging his transfer from Mumbai to Chennai". The finding of the High Court was challenged before us in this appeal on the ground that the same is not based on evidence and is contrary to the opinion/recommendations of the medical experts as regards to the petitioner's illness.

We have perused the pleadings and the orders impugned in this appeal and also the annexures filed along with the appeal and heard the lengthy arguments advanced by the learned counsel appearing on either side.

We are of the opinion that the appellant is not entitled to any relief in these proceedings. The appellant remained absent from his duty for a very long time i.e. from 3.6.1997 to 23.11.1997 without any reasonable cause and justification inspite of the respondent's requests to join the duty and inspite of the respondent's granting him further time to join the duty . The conduct of the appellant in remaining absent for such a long time shows that he was bent upon to evade the transfer order in any possible manner. The grounds of ailment were taken as a ruse to avoid transfer which is amply proved by the conduct of the appellant, when he had unauthorisedly remained absent on the ground that he was unable to attend the duty due to illness for such a long but he was quite capable of attending the court proceedings on the various days and was also capable of coming to Delhi to file a petition before this Court. The concurrent finding of the enquiry is that he has been shifting stands because initially on the very day of the service of the transfer order he gave a representation mentioning illness of his wife and the studies of his son for the purpose of deferment of the transfer to Chennai from Mumbai. But in the other representation to other Officer of the Bank, which he has produced to the Bank, he has stated the reason of his illness as an excuse. Thus, the conduct of the appellant in trotting up all these defenses show that he was trying to avoid transfer to Chennai through all possible means. The reason for deferment of transfer given by him before the High Court and this Court in the writ petition and the appeal filed by him against the transfer order was a simple ruse to avoid the transfer. It has been affirmed by the Court in that proceeding that the transfer was done as per exigencies of the Bank. The transfer of the appellant was effected to a large city namely Chennai which as per his own admission has very good medical facilities which are comparable to those in Mumbai. The service of specialist officers and for that matter all officers in the Bank are transferable on all India basis and they are liable to the posted anywhere in India subject to the personnel and manpower requirement and exigencies of the Bank.

This Court has repeatedly held that the factual finding of the Disciplinary Authority after holding a detailed enquiry and after going through elaborate evidence are not assailable in the courts unless the breach of principles of natural justice or the violation of any rules or any material irregularity on the face of record is alleged and shown. However, in this case the High Court in the jurisdiction under Article 226 of the Constitution of India has again gone into all aspects of the enquiry in detail and has come to the same factual finding as the Disciplinary Authority and the Appellate Authority. Such concurrent findings by three different Authorities including the High Court should not be disturbed by this Court under Article 136 of the

Constitution of India. We, therefore, have no other option except to dismiss this appeal. Accordingly, the appeal stands dismissed.

At the time of argument, Mr. V. Sudeer, the learned counsel for the appellant invited our attention to the affidavit of undertaking dated 27th July, 2002 filed by the appellant herein. In spite of the order of dismissal, the learned counsel has requested this Court to take a lenient view considering peculiar facts and circumstances of the case. The learned counsel submitted that the appellant is ready to forgo the entire back wages and shall join duty at the place where he is posted and that he be reinstated in service. He also made an alternative plea that if for any reason the Bank is not willing to consider his request for his reinstatement on sympathetic grounds, the Bank may be advised to pay some lumpsum payment to the appellant. The matter was heard on 19th May, 2006 for this purpose and adjourned to ascertain the views of the Bank and is listed today the 22nd May, 2006. Mr. L.N. Rao, learned Senior Counsel for the Bank reported that the Bank is not willing to reinstate the appellant in service in view of dereliction of duty and seriousness of the proved charges, but however is ready and willing to abide by any further direction that may be issued in regard to the above proposal.

We have considered the submissions made by both sides. Irrespective of order of dismissal of the appeal filed by the appellant, we feel that the request fervently made by the Counsel for the appellant should be sympathetically considered to meet the ends of justice. The appellant was dismissed from service on 4.9.1998. He is without pay for all these years in view of the order of dismissal. According to the appellant, his wife also died of cancer. It is settled law that a person who is dismissed from service is entitled to get only the provident fund but no gratuity. In the instant case, the total amount of provident fund payable to the appellant comes to Rs.3,36,158/- and gratuity comes to Rs.1,49,215/-. The appellant is liable to pay a sum of Rs.2,60,228/- towards outstanding dues to the Bank for the various loans availed by him from the Bank. Therefore, after deducting sum of Rs.2,60,228/- from and out of the total amount of provident fund of Rs.3,36,158/-, the balance comes to Rs.75,930/-. The appellant has now crossed 58 years of age and getting a new job at this juncture is also not possible for him. Considering the totality of all the peculiar facts and circumstances of this case, we feel that if we direct the Bank to pay a sum of Rs.1,50,000/-, which includes the balance provident fund of Rs.75,930/- after adjusting the loan amount due to the Bank, that would meet the ends of justice. We also make it clear that the appellant will have no other claims against the Bank hereafter. In order to give quietus to this long standing litigation, we direct the Bank to pay to the appellant by Demand Draft a sum of Rs.1,50,000/- towards full and final settlement of all claims between both the parties. If there is any discrepancy with regard to the amount payable to the appellant by way of provident fund and the loan amount, the appellant is at liberty to approach the Bank for any clarification and if such a letter is received from the appellant, the Bank shall consider the same and do the needful at the earliest.

The appeal shall accordingly stand dismissed. There shall be no orders as to costs.