

PETITIONER:
STATE BANK OF INDIA & OTHERS.

Vs.

RESPONDENT:
T.J. PAUL

DATE OF JUDGMENT: 04/05/1999

BENCH:
M. Jagannadha Rao. & S.N. Phukan,

JUDGMENT:

M. JAGANNADHA RAO, J.

Leave granted.

This appeal is preferred by the State Bank of India, Bombay, its Deputy Managing Director(Appellate Authority), Bombay and the Chief General Manager(Disciplinary Authority), Madras against the judgment of the Division Bench of the Madras High Court in W.A. No.490 of 1998. By that judgment, the Division Bench confirmed the judgment of the learned Single Judge in O.P. No.10222 of 1991 dated 7.1.1998.

The brief facts of the case are as follows:

The respondent joined service in the Bank of Cochin (the Bank has since been amalgamated with the State Bank of India w.e.f. 27.4.85) on 1.11.1996 and was promoted as an officer and then as Manager of the Madras Branch of the Bank of Cochin. The disciplinary action initiated against him related to 1977-1981 when he was working as Manager at Madras. On 25.8.81, he was transferred to Calcutta. He received letters of commendation dated 10.3.83 and 16.4.84 and his Branch at Calcutta stood at No.1 in the matter of mobilisation of advances. It appears that some advances given by him while working as Manager at Madras during 1977-1981 could not be recovered and hence on 4.2.84, he was reposted at Madras for the purpose of recovering the advances. The respondent made substantial recoveries after his reposting in Madras but he was suspended on 13.7.1984 and served with a charge sheet on 18.9.1984 stating that he had given advances unauthorisedly without discretionary power/prior permission /observing lending norms and that his actions amounted to 'serious misconduct' which involved financial loss and violation of Head Office prescriptions with vested interest and causing wilful damage to the interests and affairs of the Bank. The respondent denied the charges in his reply dated 20.10.1984. A domestic inquiry was held by appointing an Advocate as Inquiry Officer. The respondent submitted his final explanation on 15.5.1985. On 3.8.1985 the Inquiry Officer submitted his report. He held that the allegations under "items 1,5,7,8,9(A/c No. 20/79, 50/80, 62/80, 63/80, 64/80, 2/81, 37/81; 10,11,12(a,b), 13,14 (A/c 99, 137, 168, 183, 299, 405 & S. Item Nos. 554 & 518); 15,16,17(b), 18, 19, 20, 21, 22, 23 (a,b,g,i,k,m), 24 & 25(9)" were not proved. He

further said that so far as the remaining items 2,3,4,6,9(A/c 18/81, MTL 1/80), 12,14(A/c 123, 199, 397 & 432), 17(a), 23(c,d,e,f,h,j,l,n) were concerned, the main irregularity found was that there was no proper sanction or ratification from the Head Office. (Item 25 is a summary of the items).

He accepted by referring to the evidence of AW1 and AW2 (Inspectors of Branches) that there was a practice, in certain Branches, of giving advances without sanction from the Head Office (as seen from Exhibits B6, B10 to B15 of Head Office) and in such cases subsequent ratification was granted to such advances given without sanction. He stated that Exhibits B18 to B22 were the letters of appreciation received by the respondent from the Department to the effect that his performance was 'best'. He found, in favour of the officer and in rejection of the language employed in the charge- memo as follows:

"In the circumstances, no reasonable man would be able to conclude that, in connection with the said transactions, Sri Paul acted with vested interest and with the intention of causing wilful damage and financial loss to the Bank. He might have allowed the said transactions with the good intention of developing the business of the Bank and also with a bonafide belief that the said transactions would be ratified by the Head Office in the normal course."

To the above extent, the finding is in favour of the respondent.

He further concluded in favour of the respondent as follows:

"My conclusion is that, in the light of the evidence adduced before me, it would be wrong to allege that Sri Paul had any intention to cause wilful damage or financial loss to the Bank as regards the said transactions."

Having held in favour of the respondent as stated above, the Inquiry Officer however gave a finding of gross negligence against the respondent in the matter of not obtaining sufficient securities, as follows:

"As regards the transactions mentioned as items 23(d,f,h,j,n) in Ext. A3, it has been stated that Sri Paul has failed to take sufficient security for the said transactions. In this regard, there is gross negligence on the part of Sri Paul and he has acted in violation of the Head Office instructions."

He then referred to item 25 which related to 19 advances (the 9th party was given loan not during the tenure of the

respondent) and said that Mr. Paul was transferred from Calcutta to Madras in February 1984 to enable him to recover the advances he had given earlier during 1977-1981 and that if he were not suspended in July 1984, he would have recovered 'substantial' amounts. The Inquiry Officer in that connection observed as follows:

"If Sri Paul had not been suspended abruptly, he would have been able to persuade the parties concerned to remit more amounts. After having deprived(him) of such an opportunity, it would be unjust to throw the entire blame on Sri Paul as regards the outstandings in question."

On these findings, the Disciplinary authority issued a second notice on 22.1.1986 proposing 'dismissal without notice'. The said letter stated that the Inquiry Officer had held charges 23(d,f,h,g,n) proved and held him guilty of 'gross negligence' and also guilty of 'violation of the Head office instructions'. The disciplinary authority then said that having regard to the report, evidence and defences and the gravity of charges proved, and the fact that his actions had jeopardised the Bank's interests, he was proposing to impose the punishment of 'dismissal without notice'. The respondent submitted his reply to the above proposal on 18.2.1986. Thereafter, the disciplinary authority passed orders of 'dismissal from service without notice' on 20.3.1986.

The appellate authority modified the said order on 30.7.87 from dismissal without notice to removal. It is necessary to refer to it in some detail. The appellate authority initially observed:

"Though, allegations of malafides, corrupt practices etc. were absent in the charge sheet served on the appellant...."

He, however, stated that the respondent had exceeded his powers while sanctioning advances and acted without restraint thereby jeopardising the Bank's interest. He did not obtain prior approval/sanction/ratification of Head office. The unauthorised advances were upto Rs.44.71 lakhs and resulted in substantial loss of Rs.16 lakhs. The appellate authority then accepted the practice of instructions of Head Office as follows:

"It may be true that the Managers of the Bank of Cochin branches were given oral orders/instructions for disbursement of loans by the Head Office functionaries."

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but observed that such advances sanctioned under oral orders/instructions should be got ratified/approved and failure to do so could be cause of disciplinary action. It was observed that the respondent could not rely on the practice in Bank of Cochin. He had acted against the Head Office instructions. The absence of seeking sanction raised 'doubts on his plea of bonafide action'. The appellate authority admitted that the respondent was posted back at

Madras for effecting recoveries. He also referred to an order of a lesser punishment passed by the then Chairman, Bank of Cochin (reduction in rank) which was not communicated to the officer. This was not given effect to by the Bank of Cochin as the Bank came under moratorium and the order had no validity. He said that no doubt, the respondent had received certificates of appreciation earlier for his good work, but these letters would not mitigate the magnitude of the lapses because the evidence proved 'gross negligence and actions in violation of Head Office instructions'. The appellate authority observed:

"It may be true that in the interests of giving speedy financial assistance to important and deserving borrowers, the Managers in Bank of Cochin were sometimes given oral instructions by Head Office functionaries."

but this will not help in view of Bank's instructions dated 11.4.1978 against such loans for which ratification was not obtained. Nor was there proof of oral instructions. As the officer was one whose 'integrity' was not in doubt and he was relatively young, it was a fit case for modifying the order of 'dismissal' into one of 'removal from service' in terms of Rule 49(g) of State Bank of India (Supervisory Staff) Rules. Removal was to take effect from date of dismissal.

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The above orders were questioned in writ petition. The learned Single Judge while allowing the writ petition held that the finding of the inquiry officer on item 23 was that no financial loss was proved and if it was a case of not taking adequate 'security' from the loaners and in not obtaining ratification as per Head office instructions, these charges were not sufficient - in view of Rule 22(vi)(c) and (d) read with sub-rule (vii) - for imposing a penalty of dismissal or removal. Only a minor penalty could be imposed. As per inquiry Officer's report there was no actual loss caused by reason of any act of the employee wilfully done. There was no evidence of financial loss adduced before the Inquiry Officer. The finding that the respondent jeopardised Bank's interest was based on no evidence. Penalty must have been only for minor misconduct. The SBI Rules were not applicable since misconduct alleged related to the period of service in the Bank of Cochin. The learned Judge observed that 'punishment of removal' could not have been imposed as it was not one of the enumerated punishments under Bank of Cochin Rules.

The writ petition was allowed, the impugned order was quashed. It was, however, observed that the Bank could impose punishment for minor misconduct as per Rules of Bank of Cochin. The Writ Appeal preferred by the State Bank of India was dismissed for the same reasons and the respondent was directed to be reinstated with backwages, promotion and all other monetary benefits like salary, increments, etc. The Bank could impose penalty for minor misconduct.

It is against this judgment that this appeal has been preferred by the State Bank of India. In this appeal we have heard the submissions of learned senior counsel for the Bank, Sri T.R. Andhyarujina and of learned senior counsel

for the respondent, Sri P.P. Rao.

We shall first refer to the Rules which are applicable to the facts of the case and regarding the applicability of which there is no dispute. These are contained in the Bank of Cochin Service Code. Chapter VII deals with Discipline and Disciplinary action. Para 22 (iv) defines 'gross-misconduct'. We shall refer to the relevant sub-clauses (h) and (l). They read as follows:

"Para 22(iv): By the expression 'gross misconduct' shall be meant any of the following acts and of omission on the part of an employee:

(a) to (g).....

(h) wilful insubordination or disobedience of any lawful and reasonable order of the Management/or of a superior

(i) to (k).....

(l) doing any act prejudicial to the interests of the bank, or gross negligence or negligence involving or likely to involve the Bank in serious loss."

As to the punishments for 'gross misconduct', they are enumerated in para 22(v) and read as follows:

"Para 22(v): an employee found guilty of gross misconduct may:

(a) be dismissed without notice, or

(b) be warned or censured, or have an adverse remark entered against him, or

(c) be fined, or

(d) have his increment stopped/basic pay reduced, or

(e) have his misconduct condoned and be merely discharged from service."

It is also necessary to refer to the definition of 'minor misconduct' in para 22(vi) and the punishments therefor in para (vii). They read as follows to the extent relevant for the case.

"Para 22(vi): In the expression 'minor misconduct' shall be meant any of the following acts and omissions on the part of an employee:

(a)

(b)

(c) neglect of work, negligence in performing duties;

(d) breach of any rule of business of the Bank or instruction for running of any department;

(e) to (j)

(k) the employee, especially an officer, acting on oral or telephonic instructions from the Chief Executive Officer or other officers should get the same confirmed in writing the same day or the day next. The employee will be estopped from making the plea of oral instructions for his acts which have not been confirmed.

(l) every employee shall be deemed to have the knowledge of all the rules, regulations, direction, and instructions issued by the bank from time to time, for transacting any business of the bank, and for administration of the bank, and in particular he shall be deemed to have complete knowledge of the memorandum of Instructions of the bank and all amendments thereto issued from time to time, the usual safeguard and precautions to be taken with regard to bank's advance and custody of securities, rules of documentation and maintenance of customers accounts etc. and shall strictly confirm to and abide by such rules, regulations, procedure, directions, and instructions including the provisions of this Code.

(m)

(n)"

Para 22(vii) enumerates the punishments for minor misconduct as follows:

"Para 22(vii): An employee found guilty of minor misconduct may:

(a) be warned or censured; or

(b) have an adverse remark entered against him; or

(c) have his increment stopped for a period not longer than six months; or

(d) have his misconduct condoned."

It will, in our opinion, be sufficient to consider the case in the light of the order of the appellate authority but at the same time keeping the observations of the Inquiry Officer and the Disciplinary authority in mind.

The appellate authority held that 'allegations of malafides, corrupt practices etc. were absent but that the respondent "exceeded his powers while sanctioning advances and acted without restraint thereby jeopardising the Bank's

interest, that even if oral instructions were given they should be got ratified. Hence respondent could not rely on the practice in Bank of Cochin. The absence of seeking sanction raised a doubt about his bonafides. His actions were contrary to Bank's instructions dated 11.4.1978. There was no proof of oral instructions of Head Office. The Officer did not obtain prior approval/sanction/ratification of the Head office. The unauthorised advances upto Rs.44.7 lakhs resulted in substantial loss upto Rs.16 lakhs. The good certificates obtained did not mitigate the magnitude of the lapses and the evidence proved 'grossed negligence and actions in violation of Head office instructions'. But the respondent's integrity was not in doubt.

Learned senior counsel for the appellant, Sri T.R.Andhyarujina contended that proof of serious loss is not necessary and likelihood of loss is sufficient and this aspect was ignored by the High Court.

On the other hand, learned senior counsel for respondent Sri P.P.Rao contended that the inquiry officer did not give any finding of serious financial loss.

Taking up the definition of 'gross misconduct' in para 22(iv), it is obvious that clause (h) does not apply because the charge is not one of insubordination or disobedience of specific orders of any superior officer. Coming to clause (l) of para 22(iv), the doing of any act prejudicial to the interests of the bank, or gross negligence or negligence involving or likely to involve the Bank in serious loss is gross misconduct. In other words likelihood of serious loss coupled with negligence is sufficient to bring the case within gross misconduct. The Inquiry Officer's finding of 'gross misconduct' on the ground of not obtaining adequate security is, therefore, correct and cannot be said to be based on no evidence as held by the High Court. This can be contrasted with para 22(vi)(c) under minor misconduct which deals with 'neglect of work and negligence in performing of duties'. In our view, the contention of the learned senior counsel for the appellants Sri T.R.Andhyarujina is, therefore, entitled to be accepted.

The contention of the learned senior counsel for the respondent ignores the fact that 'gross negligence or negligence likely to involve the Bank in serious loss' would come under major misconduct within para 22(iv)(l). As stated above, even assuming that there is no gross negligence, simple negligence will come under major misconduct if accompanied by 'likelihood' of serious loss and this is clear from para 22(iv)(l). Hence the finding of the Inquiry Officer regarding gross misconduct is correct and could not have been set aside by the High Court. The findings of the Inquiry Officer clearly bring the case under 'major misconduct'. As held in Disciplinary Authority-cum-Regional Manager vs. Nikunja Bihari Patnaik [1996 (9) SCC 69], proof of loss is not necessary.

We are, therefore, of the view that the High Court was not correct in holding that the findings of the Inquiry Officer or of the disciplinary or appellate authorities did not justify a finding of 'major misconduct' on the basis of para 22(iv)(a)(l).

But this does not conclude the matter. The learned senior counsel for the respondent Sri P.P. Rao is right in contending that the appellate authority, once it came to the conclusion that the punishment of dismissal was not warranted in the facts of the case, it could not have awarded the punishment of 'removal' which was not one of the enumerated penalties under para 22(v) of the Rules. In fact, the learned Single Judge also adverted to this aspect. If one reads the order of the appellate authority, it is clear that the said authority went by Rule 49(g) of the State Bank of India (Supervising Staff) Service Rules which admittedly, is not applicable to charges pertaining to the period 1977-1981 when the Rules of Cochin Bank applied. The amalgamation of the Bank of Cochin with the State Bank of India took place only on 27.4.85. It may be that the Rules of the State Bank of India provided for a punishment of removal, but in the Rules relating to penalties for 'major misconduct' in para 22(v) of the Rules applicable to the employees of the Bank of Cochin, removal is not one of the enumerated punishments which could be imposed. The said punishment is not the same thing as "condoning misconduct and merely discharging from service" as provided in para 22(v)(e) of the said Rules.

Learned senior counsel for the appellants Sri T.R.Andhyarujina tried to submit that if the appellate authority decided not to dismiss the respondent, it still had inherent power to award a punishment of 'removal', which was lesser in severity. Learned senior counsel contended that the discretion of the authorities to award such an appropriate punishment could not be interfered with in view of the decision of this court in Union of India vs. Ganayutham [1997 (7) SCC 463]. In our view, this decision is not applicable to the facts of the case. Here the Court is not interfering with the punishment awarded by the employer on the ground that in the opinion of the Court the punishment awarded is disproportionate to the gravity of the misconduct. Here, the gradation of the punishments has been fixed by the rules themselves, namely, the Rules of the Bank of Cochin and the Court is merely insisting that the authority is confined to the limits of its discretion as restricted by the Rules. Inasmuch as the Rules of the Bank of Cochin have enumerated and listed out the punishments for 'major misconduct', we are of the view that the punishment of 'removal' could not have been imposed by the appellate authority and all that was permissible for the Bank was to confine itself to one or the other punishments for major misconduct enumerated in para 22(v) of the rules, other than dismissal without notice. This conclusion of ours also requires the setting aside of the punishment of 'removal' that was awarded by the appellate authority. Now the other punishments enumerated under para 22(v) are 'warning or censure or adverse remark being entered; or fine; or stoppage of increments/reduction of basic pay or to condone the misconduct and merely discharge from service. The setting aside of the removal by the High Court and the relief of consequential benefits is thus sustained. The matter has, therefore, to go back to the appellate authority for considering imposition of one of the other punishment in para 22(v) other than dismissal without notice.

In the result the setting aside of the order of

'removal' as done by the High Court is sustained and the directions to pay him the backwages, grant such promotions and monetary benefits by way of salary, promotion, increments, etc. as granted by the High Court will also remain. There will, however, be a modification of the orders of the learned Single Judge and of the Division Bench to the extent, namely, that the matter will go back to the appellate authority for considering which of the punishments other than 'dismissal without notice' under para 22(v) could be imposed on the respondent. We direct accordingly. The benefits above referred to as directed by the High Court shall be computed and paid to the respondent in accordance with the relevant rules within 3 months from the date of receipt of a copy of this order.

The appeal is partly allowed to the extent indicated above. There will be no order as to costs.