

Constitutional Writ
PRESENT: **The Hon'ble JUSTICE I.P. MUKERJI**

Judgment on 03.09.2010

W.P. NO. 583 (W) OF 2008

SRI BHABATOSH CHANDRA DAS

Versus

UNITED BANK OF INDIA & ORS.

POINTS:

DISCIPLINARY PROCEEDING, MAJOR PENALTY: In passing order for penalty whether the principle of proportionality is to be considered- **United Bank of India, Officer Employees' (Discipline and Appeal) Regulations, 1976 R 4**

FACTS:

Writ petitioner was dismissed from his service before two years of his superannuation by the disciplinary authority on the ground that he sanctioned loan without proper security. Resulting of such dismissal the petitioner lost his entire gratuity and pension.

HELD:

The amount of loan advanced is mentioned. What was the amount outstanding in respect of each loan has not been mentioned. What is the value of the existing security is not ascertained. How much of the outstanding can be repaid out of secured assets is also not said. What are the other assets from which the loan can be recovered are also not mentioned. Certainly, if the security is insufficient that loan cannot be recovered from that particular security. But to what extent the particular security is insufficient has to be stated in the order, to estimate the likely loss. That has not been done. Para 23

Recently, a new principle is evolving called the principle of proportionality. This principle is to be supplemental to the principles of reasonableness enshrined in the Wednesbury case. According to this principle any action should be proportional to the cause occasioning such action. An action by a public authority should be balanced. An excessive action is against the doctrine of

proportionality. This applies to awards of punishment also. Punishment should be commensurate with the guilt. Such punishment should be reasonably inflicted in proportion to the guilt.

Para 30

This relatively new doctrine is another test for reasonableness, which is more expansive and searching. Therefore, when four major penalties are contemplated a reasonable man would sit down and think which of the major penalties is proportional to the offence. In other words, which punishment would according to a reasonable banker be adequate for a particular offence. In my opinion in the above facts this punishment of removal from service is disproportionate. Disproportionate on the facts and also because at the age of the writ petitioner removal is equivalent to dismissal. At his age he would be unsuitable for most types of employment. Therefore, on being removed from service he would be deprived of nearly all financial benefits arising out of his long service with the bank. This, in my opinion, is too harsh, for his fault and hence disproportionate to his guilt.

Para 31

There would be no point in sending the matter back to the appellate authority to revise the punishment because its mind is made up and it would not change the level of punishment.

Para 32

Therefore, the impugned order is revised by substituting major penalty (f) that is, compulsory retirement for (g) that is, removal from service. In compulsory retirement, the writ petitioner would get gratuity and 2/3 of his pension. On the evidence disclosed in the adjudication proceedings this penalty would be more than sufficient.

Para 33

Cases cited:

Lalit Popli – v – Canara Bank and others, (2003)3 SCC 583; Sub-Divisional Officer, Konch – v – Maharaj Singh, (2003)9 SCC 191; Tara Chand Vays – And – Chairman and Disciplinary Authority and ors., 1997 II LLJ 26; State Bank of India & Ors. – v – T.J. Paul, (1999)4 SCC 759 and

Chairman India Railway Recruitment Board & Anr. – v- K. Shyam Kumar & Ors., (2010) 6 SCC 614

For the petitioner : Mr. Manas Sarbadhikary
Mr. Uttam Kumar Mazumder
Mr. Sounak Banerjee
Mr. Debasish Kundu

For the respondents : Mr. R.N. Mazumder
Mr. Sourav Chakrabarty

I.P. MUKERJI, J.

This is a writ by a former employee of United Bank of India. He was working as Manager in the Bidhan Sarani Branch of the bank. He was so posted from 14th June 2004.

2. As his retirement was approaching, he was charged with misconduct in his service. Enquiry proceedings were initiated which resulted in a finding of grave fault. Enquiry was made and its report placed before the Disciplinary Authority. The Disciplinary Authority found him guilty and on 19th March 2007 imposed the punishment of removal from service. He appealed against that decision to the appellate authority which on 3rd October 2007 affirmed that order.

3. From the time of passing of the order of the appellate authority the writ petitioner had slightly more than two years of service left. He was due to retire after 31st October 2009.

4. Now, the consequence of this order of the Disciplinary Authority as affirmed by the appellate authority is that after a long service the petitioner is deprived entirely of his gratuity and

pension. Only the provident fund has been handed over to him. This means for the rest of his life he would have to live on whatever savings he has made during his service together with interest from provident fund and no more.

5. Now, to deprive an employee with a long service of nearly all retirement benefits is indeed a very severe punishment. This writ has challenged the entire proceedings leading to the order of punishment. In the Rules of the bank termed United Bank of India, Officer Employees' (Discipline and Appeal) Regulations, 1976, this punishment is described as a major penalty. Not only is it a major penalty but it is the severest of all major penalties. It is almost equivalent to dismissal. The only difference is that under the above rules, if an employee is dismissed, he is debarred from seeking fresh service but if an employee is simply removed from service, that bar is not there. But in all other respects removal from service and dismissal from service are identical in as much as both strip the employee of nearly all post-retiral benefits. Provident fund cannot be taken away because that is protected by another law.

6. Therefore, the legality of this decision has to be examined.

7. In this particular case the issue that has attained the greatest importance is that even assuming that the fact finding authority has found all the facts correctly, can the ultimate order which has been passed be supported in law?

8. To answer the question, now, the facts have to be examined in some detail.

9. I will examine the order of the appellate authority. The appellate authority has discussed the entire facts in great detail, like in an original proceeding.

10. Very broadly the charge against the writ petitioner was that there was misconduct on his part in sanctioning loans to borrowers. Allegedly, adequate security, was not taken by him in granting loans. This inadequacy of security is allegedly from under value of the property, secured against the loan advanced or some defect in its title as a result of which its value is diminished.

11. The first head of charge against the writ petitioner was for sanctioning a loan limit of Rs.22.00 lac, on 19th October 2004, to M/s. S.P. Engineering & Electrical Works, whose proprietor was one Sanjay Paul.

12. Property of one Shamyal Kumar Ghosh was given as security. The value of the said property was estimated by the writ petitioner at Rs. 36.37 lacs. As some defect of the property was observed, i.e. the property being allegedly "sali land", the borrower offered some other property as security. The only grievance it seems is that to replace the security the borrower had to make an additional expenditure.

13. Further, it is the charge of the bank that such loan could not have been sanctioned unless a turnover of Rs.1.27 crores and stock in trade of Rs.31.25 lac were shown by the borrower. Existence of such assets was not verified by the writ petitioner before sanction of the loan. Further, the genuineness of some documents was not verified. Moreover, the writ petitioner did not ensure that the said assets were insured.

14. The second head of charge is for similar misconduct in sanctioning a loan of Rs.25,00,000/- in favour of M/s. Prayojani against an equitable mortgage of the property of the said Shamyal Kumar Ghosh. It is said that such loan was sanctioned by him without adequate security. No proper valuation report was prepared before the said loan was sanctioned.

15. The next head of charge is for similar conduct in sanctioning a housing loan of Rs.4.50 lac to Sk. Aidul. It appears that there was some omission in incorporating the information relating to income tax paid by the borrower for the last three years. Hence, the repaying capability of such borrower was not established.

16. The next head of charge is for similar misconduct in sanctioning another housing loan of Rs.3.00 lac to one Alok Chakraborty. Here the necessary declaration of profit and loss accounts, balance-sheet etc. were not taken. In other words repayment capacity of the borrower was not ascertained by the writ petitioner before sanctioning credit.

17. Before proceeding further, one has to remind oneself that the writ court while exercising jurisdiction in an application challenging disciplinary proceedings cannot act as an appellate authority. [See **Lalit Popli – v – Canara Bank and others, reported in (2003)3 SCC 583**]. Only in the circumstances mentioned in paragraph 17 and 18 of that judgment, namely, errors of law or procedural error or violation of natural justice can the court interfere. It is also observed in that judgment that when the decision of the Disciplinary Authority is based on some evidence the court should not re-appreciate that evidence. In **Sub-Divisional Officer, Konch – v – Maharaj Singh,**

reported in (2003)9 SCC 191, the Supreme Court set aside the interference by the High Court with the findings arrived at by the enquiring authority.

18. Further, in **Tara Chand Vays – And – Chairman and Disciplinary Authority and ors. reported in 1997 II LLJ 26** the Supreme Court equated bank officials with trustees of the society, vesting them with powers, duties and responsibilities towards members of the society. They were equated with trustees for socio-economic development contemplated by the constitution. It said that disciplinary measures should eradicate the corruption in such public offices so as to achieve the goal of the Constitution.

19. The said court in **State Bank of India & Ors. – v – T.J. Paul, reported in (1999)4 SCC 759** said that negligence which might occasion loss to the bank amounted to “gross misconduct”.

20. Now, let us come back to this case.

21. Let us assume all the findings in the order of the appellate authority are correct. Even if, all the findings are assumed to be true, what has the bank established against the writ petitioner?

22. The entire basis for imposing this punishment on the writ petitioner was that the accounts of these borrowers have allegedly become nonperforming which would cause future loss to the bank. Such loss arising from the likely inability of the bank to recover the loan together with interest accrued thereon on account of insufficient security.

23. The amount of loan advanced is mentioned. What was the amount outstanding in respect of each loan has not been mentioned. What is the value of the existing security is not ascertained. How much of the outstanding can be repaid out of secured assets is also not said. What are the other assets from which the loan can be recovered are also not mentioned. Certainly, if the security is insufficient that loan cannot be recovered from that particular security. But to what extent the particular security is insufficient has to be stated in the order, to estimate the likely loss. That has not been done.

24. I am also not unmindful that the standards of discipline in sanctioning loan in a bank must be scrupulously strict, because when disbursement of public money is involved, in the form of loan, scrupulous care has to be taken to receive adequate security to ensure its recovery. Any lapse in such duty to obtain adequate security is a major fault. Nevertheless any adjudicator alleging major misconduct has to give some grounds suggesting actual loss or a likelihood of such loss in the future. Such likelihood should be a reasonable likelihood and not a remote likelihood. Reasonableness here means the standards of reasonableness of prudent bankers.

25. I am afraid that such likelihood of loss is not clearly evident from the appellate authority's order.

26. Nevertheless, let us assume that some loss was likely to be caused to the bank by the petitioner taking insufficient security. Further, that such loss was to be considered as a major misconduct.

27. Now, let us come to the rules relating to officer employees United Bank of India, Officer Employees' (Discipline and Appeal) Regulations, 1976.

Rule 4 deals with penalties. Penalties are classified as major penalties and minor penalties.

28. Let us assume that the penalty to be imposed is a major penalty. Major penalties have four gradations, namely, 4(e), (f), (g), (h). They are reproduced as follows:

“ 4.....

Major penalties

- (e) reduction to a lower grade or post, or to a lower stage in a time scale;**
- (f) compulsory retirement;**
- (g) removal from service which shall not be a disqualification for future employment.**
- (h) dismissal which shall ordinarily be a disqualification for future employment.”**

29. The punishment imposed upon him, that is, removal from service meant he would be deprived of gratuity and pension. It is said in court that the gratuity receivable was about Rs.10,00,000/- which has been withheld. He is getting no pension.

30. Recently, a new principle is evolving called the principle of proportionality. This principle is to be supplemental to the principles of reasonableness enshrined in the Wednesbury case. According to this principle any action should be proportional to the cause occasioning such action. An action by a public authority should be balanced. An excessive action is against the doctrine of proportionality. This applies to awards of punishment also. Punishment should be commensurate with the guilt. Such punishment should be reasonably inflicted in proportion to the guilt. [see

Chairman India Railway Recruitment Board & Anr. – v- K. Shyam Kumar & Ors. reported in (2010) 6 SCC 614] and all the Indian and English cases discussed therein.

31. In my opinion, this relatively new doctrine is another test for reasonableness, which is more expansive and searching. Therefore, when four major penalties are contemplated a reasonable man would sit down and think which of the major penalties is proportional to the offence. In other words, which punishment would according to a reasonable banker be adequate for a particular offence. In my opinion in the above facts this punishment of removal from service is disproportionate. Disproportionate on the facts and also because at the age of the writ petitioner removal is equivalent to dismissal. At his age he would be unsuitable for most types of employment. Therefore, on being removed from service he would be deprived of nearly all financial benefits arising out of his long service with the bank. This, in my opinion, is too harsh, for his fault and hence disproportionate to his guilt.

32. There would be no point in sending the matter back to the appellate authority to revise the punishment because its mind is made up and it would not change the level of punishment.

33. Therefore, I revise the impugned order by substituting major penalty (f) that is, compulsory retirement for (g) that is, removal from service. In compulsory retirement, I am told the writ petitioner would get gratuity and 2/3 of his pension. I think on the evidence disclosed in the adjudication proceedings this penalty would be more than sufficient. The writ application is accordingly allowed to the above extent. Gratuity and arrear pension are to be paid within three months from date.

34. Urgent certified photocopy of this judgment and order, if applied for, to be provided upon complying with all formalities.

(I.P. MUKERJI, J.)

Later :

35. Stay of operation of this judgment and order is prayed for. Considering the fact that the bank is allowed three months time to comply with this order, this prayer for stay is considered and refused.

(I.P. MUKERJI, J.)